

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

CARL L. WHITE,
COMPLAINANT

V.

DISTRICT OF COLUMBIA DEPARTMENT
OF CORRECTIONS (AGENCY) AND THE
FRATERNAL ORDER OF POLICE (FOP)

PERB CASE # 02-U-15

**COMPLAINANT'S OPPOSITION TO AGENCY-RESPONDENT'S
FRATERNAL ORDER OF POLICE MOTIONS TO DISMISS**

Comes now the Complainant, and based upon his memorandum of points and authorities
here to attached and the prior pleadings and exhibits herein before filed, opposed agency-
respondent's/ fraternal order of Police's motions to dismiss.


Carl L. White

Complainant

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CERTIFICATION OF SERVICE

I hereby certify that on the 10th day of May, 2002 a copy of the foregoing was mailed,
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Carl L. White

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
COMPLAINANT'S OPPOSITION TO AGENCY-RESPONDENT'S/ FRATERNAL
ORDER OF POLICE MOTION TO DISMISS AND FOR SUMMARY JUDGEMENT**

It is the settled law of this jurisdiction that:

In a case such as this jurisdiction, the Board may review both facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

D.C. Code 17-305 (a) (1989)

It was held again in Federal Rules of Evidence. 404 (b) that:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

That rule provides that testimony regarding other wrongs may not be used to show a propensity to perpetrate the wrongs at issue, and that an accused should not be subject to conviction on the basis of crimes with which he is not charged.

See, Position Descriptions, Advance Proposed Suspension, and Retention Rosters.

The affidavits of Complainant herein before filed, the statement of points and pleadings clearly show that the respondents, upon request of two hearings of the Complainant properly made, refused to divulge the unfair labor acts with which they are charged. They cannot avail themselves of their acts. Gratehouse V. United States, 206 Ct. cl. 288, 512 F. 2d 1104 (1975) ; Evans V. Sheraton Park Hotel, 164 U.S. App. D.C. 86, 503 F. 2d 177 (1974) ; and Edgar Harris, et. ad., V. District of Columbia, 741 F. Supp. 254 (D.D.C. 1990)

ARGUMENT

The respondents are now moving for a motion to dismiss, which would prohibit Complainant from addressing the broader issue regarding relevant evidence, reprisal, proposed suspension, and the test adopted regarding the status as supervisor official in National Labor Relations Board (NLRB) V. Bell Aerospace Company; 416 U.S. 267, 288 (1974). There exist no dispute as to the law to be applied here. Evidence rules contain a strong policy forbidding character evidence in non-criminal matters pursuant to Federal Rules of Evidence 404. For the reasons set forth herein, Complainant submits that no good cause has been shown and respectfully urge that this Board deny the instant motions. In the respondent's motion to dismiss on p.4 referred to Complainant as chief case-manger and former shop steward in their exhibit "B" based on a past memorandum dated May 5, 1998. (1)The respondent's contends that Complainant was excluded from the protection of the Comprehensive Merit Act (CMPA) at D.C. Code 1-617-01 (3) (d)

1/ Memorandum cited by the respondent's showing sustained evidence for the respondent's is easily distinguishable from the present case. To admit testimony regarding Complainant's memorandum dated May 5, 1998 might encourage the outcome which 404 seeks to avoid guilt by reputation. The rule does not include prior comments about Complainant offered to prove a reasonable belief of being a supervisor in a completely unrelated event. If the Board allowed the offered evidence in, it will have to explore whether Complainant had a reasonable belief of a supervisor in each instance and will allow the respondent's the opportunity to counter each instance. The evidence will consume a great deal of the Board's time and have very slight probative value.

In fact, the respondent's misrepresented the truth in their conclusion on (p.8) regarding filing the internal complaint of discrimination, one day afterwards on November 28, 2001. The Complainant received the Advanced Notice of Proposed Suspension on November 29, 2001 pursuant to his signature on receipt dated November 29, 2001. The receipt was signed in the presence of deputy warden, Ms. Leona Bennett and Major David Rapelya, one day after filing internal complaint with Fred Staten EEO Officer. The formal complaint of discrimination filed with the D.C. Office of Human Rights was filed on or about December 23, 2001. The respondent's also claims, and again without the slightest factual support, that the Complainant cross-filed to the United States Equal Employment Opportunity Commission on January 30, 2002 on (p.3) This is a unsupported contention by the respondent's and again without the slightest factual support. To make comments that the formal complaint makes no reference to the Complainant's promotion to Correctional Program Officer (CPO) which was the basis of his internal complaint did not stem from an evidentiary hearing. Such evidence will unduly prejudice Complainant and have low probative value and little relevancy. Complainant's Title VII actions do not have an absolute right to admit into evidence information discussed with the D.C. Human Rights Office. Rule 404 (b). It should also be noted that the Complainant has not previously sought or taken the deposition of any other management official of the agency, and that no significant travel burden will be imposed upon the agency since the parties office's are located in the District of Columbia. Again, this is a vivid matter governed by the laws of the District, credibility determination are within the facts and may not be disturbed unless plainly wrong or without evidence to

support them. D.C. Code 1981, 17-305. Therefore, the above mentioned factors should not be admitted into evidence.

**DECISIONS OF THE ADMINISTRATIVE BODIES BELOW
WERE NOT SUPPORTED BY THE EVIDENCE**

The Agency, in its motion (pp.6-7) has cited cases at length for the proposition that judicial review serves the purpose of determining whether the Complainant lacks standing upon substantial evidence. Respondent contends (p.6) that the PERB has always made a distinction between obligations that are statutorily imposed under the CMPA.....

Cases cited by Respondent showing substantial evidence for the Board's decisions are easily distinguishable from the present case. In American Federation of State, County, and Municipal Employees, Local 2921 V. District of Columbia Public Schools, 42 DCR 5685, Op. No. 339, PERB Case No. 92-U-08 (1992), there was substantial evidence that the Board had no jurisdiction over the allegations and lacked authority to direct the parties to arbitration. In Washington Teachers' Union, Local 6, American Federation of Teachers, AFL-CIO V. District of Columbia Public Schools, 42 DCR 5488, Slip Op. No. 337, PERB Case No. 92-U-18 (1995), there was substantial evidence that the Complainant's allegations did not give rise to violation of D.C. Code Sec. 1-618-4 (a) (1) and (5) and no breach of DCPS statutory duty to bargain under the CMPA can be. In Butler, et al. and the Department of Corrections, 49 DCR 1152 (February 8, 2002), there was substantial evidence that the Complainant's allegations were not sufficient to support a cause of action.

In Teamsters, Local Union 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehouse men and helpers of America, AFL-CIO V. D.C. Public Schools, 43 DCR 5585, Slip Op. No. 375, PERB Case No. 93-U-11 (1994), there was substantial evidence that DCPS did not violate D.C. Code Se. 1-618-4 (a) (3) but rather Sec. 1-618-(a) (4). Also, DCPS provided adequate notice and a hearing on the evidence.

In the present case, in contrast, there was never any reliable evidence that Complainant had done anything wrong when he was charged, but the Agency arbitrarily and capriciously seized on undisputed at will status under CMPA, and used this as an excuse for a duress motive which it knew would be instrumental in bringing about Complainant's involuntary retirement on December 15, 2001, two weeks prior to his mandatory date from the D.C. Office of Personnel. Case law indicates the agency cannot avail themselves of their action. See, Winters V. Houston Chronicle Publishing Co., 795 S.W. 2d 408 (Tex. ct. app.) D.C. Code Sec 1-618-4 (a) (3) and District of Columbia Nurses Association V. D.C. Health and Hospitals Public Benefit Corporation, 46 DCR 6271, Slip Op. No. 583, PERB Case No. 98-U-02.

**RESPONDENTS COMMITTED UNFAIR LABOR PRACTICE BY
PLACING A BARGAINING UNIT EMPLOYEE IN POSITION IMPROPERLY
CLASSIFIED AS SUPERVISORY CORRECTIONAL TREATMENT
SPECIALIST (SCTS)**

Complainant had been excluded from the bargaining unit and subsequently transferred to the D.C. Jail incorrectly designated as non bargaining unit. As a result, the Board has jurisdiction to consider this matter. There exist no dispute as to the law to be applied here. The respondents have the burden of proving Complainant was exempt from the CMPA. The PERB'S lead case defining the basis for excluding employees is AFGE, Local 12 and D.C. Department of Employment Services and AFSCME, 28 DCR 3943, Slip Op. No. 14 PERB Case No. 0R006 (1981)

It is also well established that there is a duty upon one who undertake to speak "not only to state truly what he tells" but also suppress or conceal any facts within his own knowledge which materially qualify those stated. If he speaks at all he must make full and fair disclosure. See Restatement (Second) of Torts 529 (1977); Kapiloff V. Abington Plaza Corp., 59 A. 2d 516, 518 (D.C. Mun. App. 1948); and Accord, Tucker V. Beazley, 57 A. 2d 191, 193 (D.C. Mun. App. 1948)

Complainant asserts that it may maintain an action for contribution against the union because, it was jointly responsible for the violations of Title VII for which the agency has been held liable under the Title. There is no question that Title VII in Complainant's internal complaint creates joint liability where two parties are responsible for the same violation. See, e.g., 503 F. 2d at 177 and Robinson V. Lorillard Corp., 444 F. 2d 791 (4th Cir. 1, Cert dismissed, 404 U.S. 1006 (1971) (employer and union held jointly liable)


Complainant also object to the union's statement that he was under Management Supervisory Services (MSS) since October 1995. The employer became an at-will employee in August 2000. When Joseph Heard's case was discovered in August 2001, Complainant was on scheduled leave from July 24, 2001 until August 10, 2001. Correctional Treatment Specialist, Barbara Copeland provided case management services to inmate Heard from May 2001 until August 2001 when the delayed release was discovered and not charge because of the three entries in her law book. The Complainant also objects to the D.C. Office of Personnel entered into evidence by the respondents because neither the Board or Complainant depose them under oath.

Complainant note that Martha Crump, Chief of the Classification Division of Servicing, Personnel Office No. 2----the person who classified jobs by title, description, duties and pay---testified at deposition that Supervisory Housing Inspectors were not exempt under the Fair Labor Standards Act (FLSA). See, Edgar Harris, et al., V. District of Columbia, 741 F. Supp.254 (D.D.C. 1990) The employer must show that each employee meet every requirement of the claimed exemption. Pezzillo V. General Telectronic Information Systems, Inc., 414 F. Supp. 1257, 1268 (M.D. Tenn. 1975) .

Complainant wish to emphasize that he could not obtain promotion three times when he was qualified for the position as a executive manager. All performance ratings were excellent and outstanding.

In conclusion, for the reasons set forth above, the Opposition Motion for Summary Judgment should not be granted.

Respectfully submitted



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A handwritten signature in cursive script, appearing to read "Carl L. White", written in black ink.

Carl L. White

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PUBLIC EMPLOYEE RELATIONS BOARD**

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V.

DISTRICT OF COLUMBIA DEPARTMENT OF
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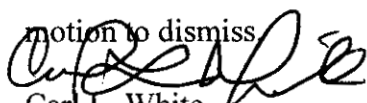
AGENCY / RESPONDENTS

PERB CASE # 02-U-15

**COMPLAINANT'S OPPOSITION TO AGENCY - RESPONDENT'S
ANSWER TO THE MOTION FOR AMENDMENT TO COMPLAINT**

Comes now the Complainant, and based upon his memorandum of points and authorities here to attached and the prior pleadings and exhibits herein before filed, opposed agency-respondent's

motion to dismiss



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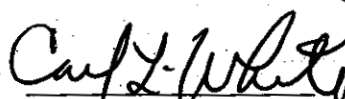
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DISTRICT OF COLUMBIA DEPARTMENT OF
CORRECTIONS (AGENCY) AND THE
FRATERNAL ORDER OF POLICE (FOP),

AGENCY / RESPONDENTS

PERB CASE # 02-U-15

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT'S
OPPOSITION TO AGENCY-RESPONDENT'S ANSWER TO THE MOTION FOR
AMENDMENT TO COMPLAINT**

It is elementary and the settled law of this jurisdiction that:

Case law makes it unlawful to coerce, threaten, retaliate against, or interfere with any person

In the exercise or enjoyment of any right granted or protected under D.C. Code 1-2525 (a)

(1992), see, Passer v. American Chemical Society, 290 U.S. App. D.C. 156,166, 435 F.2d.

322 (1991); Ravinskas v. Karalekas, 741 F. Supp. 978, 980 (D.D.C.1990).

**COMPLAINANT RAISED THE ISSUE OF COERCION IN A REASONABLE, TIMELY
MANNER**

Agency – Respondent's contends (p.2) motion to dismiss that Complainant did not received a

Final Agency decision to the Advance Notice due to his election to retire effective December

15, 2001. In Complainant's complaint paragraph 14, more then two weeks after receiving the

proposed suspension on November 29, 2001, Complainant requested at least two hearings and

was denied each time under the Comprehensive Merit Personnel Act (CMPA) at D.C. Code 1-

617.01 (3)(d). It is undisputed that the agency communicated to the Complainant that he had a

45-day suspension. The hearings would have been the first practical moment to make his assertion. And, as we are all aware, legally speaking, two weeks is not too long a time for a reasonable man to put together the events of the preceding status of at-will employee. It has long been settled in the District of Columbia that an employer may discharge an at-will employee at any time and for any reason, or for no reason at all. ADAMS v. GEORGE W. COCHRAN & CO; 597 A.2d p.31 (D.C. App. 1991).

It is not surprising that it took Complainant a little time to figure out where the agency respondent's subtle actions had led him, and why. Based on events from November 29, 2001 to December 15, 2001, I felt I was being invited, that's a polite word, or forced to retire. From all the actions that occurred starting with November and no hearing, up until the time Complainant submitted his application for retirement, based on all those actions certainly Complainant felt he was being pressured to retire. Atlantic Richfield Co. v. District of Columbia Commission On Human Rights, 515 A.2d 1095, 1099 (D.C. 1986)

COMPLAINANT RAISED THE ISSUE OF UNILATERALLY PLACING BARGAIN UNIT EMPLOYEE IN POSITION INCORRECTLY DESIGNATED FOR SUPERVISORY CORRECTIONAL TREATMENT SPECIALIST (SCTS)

The agency –respondents contend in their motion to dismiss (p.2) that on August 27, 2000 the Complainant forfeited many of his personnel related appeal rights by accepting a position within the Managerial Supervisory Services, converting his DS-12 position to an MS-12. Complainant would like to reiterate an argument set out more fully on (p.14) of his internal complaint entered into evidence with the amendment to the Complaint, which dispels the myth that the reassignment to the D.C. Jail (DCJ) was for the good of service. Rather, it will be shown that the transfer to the DCJ was unilaterally incorrectly designated for the SCTS and an abuse of discretion: D.C. Code Sec. 1-618.4

The DCJ occupies 18 housing units with a inmate population of 1,674 inmates designated for the SCTS under the purview of the warden. Therefore, Complainant objects to the

statement of one unit. The Complainant's position as a CPO simply confirmed the working foreman nature of the position attached to his original Complaint. The CPO position also show how truly subordinate it was to the true supervisor in this picture, the deputy warden, who sets policy and oversees the CPO. Complainant maintained that these regular procedures precluded his deviating in any particular case.

My practice as a CPO was to review with each case worker at least daily the progress and development of each case assigned to him. Certification of this review was made to the deputy warden in a monthly narrative report which also contains the summary of the intake process from 6:00 a.m. to 11:00 a.m. and the Lorton desk from 12:00 Noon to 9:00 p.m. including Saturday from 7:30 a.m. to 4:00 p.m. The CPO scheduled tour of duty is from 8:30 a.m. to 5:00 p.m. Between reviews, follow-up was made with the caseworker with respect to significant matters and problems, and caseworkers also reported new developments as necessary. These were reported to the deputy warden's office as required. The Saturday Schedule ended in the fall of 2001.

Prior to the Complainant's transfer to the DCJ, he was only responsible for one unit at the Correctional Treatment Facility (CTF) in the Women's Program. Complainant was responsible for one caseworker, Sidney Davis and two counselors. The male unit capacity was 73 inmates. The tour of duty was from 8:30 a.m. to 5:00 p.m. and no compensation when you stayed over eight hours, sometime getting home as late as 7:00 p.m. At the DCJ, the staff increased as high as 30 and staying beyond 8 hours everyday, including working up to three positions without help.

As evidenced by the three retention rosters entered into this case, it identifies Patricia Temoney

DS 12 as a SCTS in 1999 prior to MSS. Ms. Temoney was at the DCJ when the Complainant arrived in 1997. See, internal complaint.

ORGANIZATIONAL STRUCTURE

At the top of the agency structure for classification is a operation identified as the CASE MANAGEMENT SERVICE UNIT (CMS), it functions more as a clearing house for paperwork and a coordination office for inmate movement. It is located in the CTF, which is a contract facility adjacent to DCJ.. This is where Ms. Temoney was assigned. Of particular concern is that the Complainant should have been assign to CMS because of his non-supervisory status based on his position description and retained his career service. D.C. Code Sec. 1-618.4

The inception of MSS allowed Ms. Temoney to retained her career service protection because she was not supervising anyone. The assignment to DCJ was to his detriment and forcing the Complainant into an at-will employee because he had to supervise over twenty employees.

While under MSS, the Complainant was cited with a Cease and Desist order for sexual harassment that resulted in no closure. The agency was under a injunction from the United States District Court in case # 93-2420 (RCL). On April 2, 2001, Complainant requested a name clearing to Mr. Staten, EEO Officer. In the same month, Mr. Staten responded back in writing referring the matter to Alan L. Balaran, Esq.. After writing to attorney Balaran, the Special Master on April 12, 2001 via fax, he never responded back. Afterwards, there was a Executive Staff meeting held on June 14, 2001 regarding various agenda items held in the Warden's Conference Room chaired by Warden M. L. Brown. Deputy Warden Leona Bennett opened on behalf of the Warden with greetings and had staff to introduce themselves and talk about their areas of responsibility. Two major topics that stand out were a tracking system for institutional records and a approved visitors list for inmates. According to the meeting, visiting was not in compliance, Complainant was not in favor of taking that responsibility away from the uniform staff. The DCJ does not classify pretrial inmates by custody level without knowing an inmate's appropriate custody level and about important information

obtained in the classification assessment, for example, history of escape and compliance to institutional rules. At that time, out of 1,674 inmates, 1,300 were pretrial inmates. The turnover rate was very high to maintain a visiting list. Mr. Brown stated that someone would prepare a supplement specifically for the DCJ. On July 18, 2001 another meeting was held and Mr. Brown was absent. However, Ms. Regina Gilmore and James Murphy were also strong advocates opposing a visiting list for caseworkers working in the housing units.

On November 19, 2001 Complainant's supervisor, Ms. Bennett informed classification staff to turn in a weekly visiting list to her office per the Warden. On November 28, 2001 Complainant filed his internal complaint to Mr. Staten. A second copy of the complaint was hand delivered to the internal affairs unit on the same floor as Mr. Staten. There were two investigators in the office area namely: Gloria Nelson and Wanda Patton. Both investigators interviewed Complainant in the fall of 2001, regarding the Joseph Heard case. Ms. Nelson was a former Supervisor of Complainant at CTF in 1995. Numerous complaints were filed under her purview by Complainant and other employees, the internal complaint was in a large brown envelope with Pam Chisholm's name, head of the internal affairs submitted to Ms. Nelson. On November 29, 2001, the Complainant received the Advanced Proposed Suspension for 45 days from his supervisor, Ms. Bennett, with Major David Rapelyea in the room. After signing the receipt and reading the document, Complainant stated verbally in their presence that this was retaliation. Mr. Staten had twenty-one days to respond and never did to this date, concerning the internal complaint.

Complainant was denied procedural Safeguards
under Administrative Procedure Act (APA)

Agency-Respondent's states in paragraph one that Complainant was a supervisor. There are incredible assertions. Regarding (1) it is undisputed again that the Agency-Respondent's communicated a 45 day proposed suspension under (CMPA) at D.C. Code 1-617-01 (d) and Complainant did not get a hearing. And, regarding (2) the 45 day proposed supervision is not consistent with D.C. Personnel Regulation Chapter 38, section 3805, termination of employees which show that the Complainant was under duress due to arbitrary capricious procedures under APA. Then, no doubt realizing Complainant could not substantiate his flimsy charges at a hearing. The 45 days could have materialized into termination on December 17, 2001. Under Chapter 16 of the DPM, charges are not to be revised. An employer may discharge an at-will employee at anytime but not with career service protection. Therefore, Complainant was not a supervisor but unilaterally placed at the D.C. Jail and improperly classified as a Supervisory Correctional Treatment Specialist. The denial of the hearing was deliberately done thwarting Complainant's attempt to publicly prove his innocence. When the facts during rebuttal were reviewed on December 12, 2001, it became obvious that due process was not served under the 5th and 14th Amendments, under the CMPA. If proper procedures were in place it would have obviated the pressure to retire.

Complainant argues that the internal affairs investigation upon which the Agency-Respondent's relied in proposing 45 days was invalid as they were not promulgated in accordance with the District of Columbia (DCAPA).

See, Robinson V. Sarisby, 535 A. 2d 901, 906-908 (D.C. 1988), Vassiliades V. Garfinkel, Brooks Brothers, Miller, and Rhodes, Inc. 492 A 2d 580, 593 (D.C. 1985), Zanville V. Garga 561 A 2d 1000, 1002 (D.C. 1989) and D.C. Code 1-2556 (b)

Another point to be made here is that the reason given for Complainant's retirement, emphasizes the fact that if the Agency-Respondent's had obeyed the regulations and kept Complainant in the bargaining unit, and prevented unilaterally incorrect placement at the DCJ, there would have been little reason for him to feel he was being forced into retiring. Gratchouse V. United States, 206 ct. cl. 288, 512 F 2d 1104, where the court held that a plaintiff is required to show "demonstrable prejudice" to support a charge of procedural error.

Conclusion

For the reasons set forth above, the opposition motion for Partial Summary Judgment should be granted.

Respectfully submitted


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Certificate of Service

The undersigned certifies that on May 8, 2002 a true copy of the foregoing. Opposition Motion for Partial Summary was served via First Class mail, postage prepaid upon the following:

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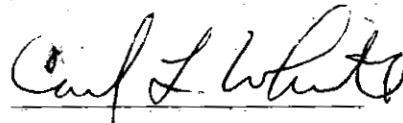
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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE,

COMPLAINANT,

v.

**THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS**

and

**THE FRATERNAL ORDER OF
POLICE,**

RESPONDENTS

PERB Case No. 02-U-15

**AGENCY-RESPONDENT'S ANSWER TO THE MOTION FOR AMENDMENT TO
COMPLAINT**

The District of Columbia Department of Corrections ("Respondent" or "Agency"), through the Office of Labor Relations and Collective Bargaining (OLRCB), answers the allegations in the above referenced Motion/Complaint as follows:

1. The statements in paragraph 1,2,3,4, and 5 failed to state a claim upon which relief can be granted, and therefore, are denied in their entirety.
2. Paragraph 6 is denied in its entirety.
3. Paragraph 7 is denied in its entirety.
4. The Agency is unable to determine whether Complainant's pleading is a motion, complaint, amendment to a complaint or an answer to his own original complaint. As

such, Agency-Respondent requests the Executive Director or the Board to dismiss the filing, with prejudice.

5. The Agency reincorporates the Answer, Affirmative Defenses, and Motion to dismiss filed in this action on April 22, 2002.

ADDITIONAL AFFIRMATIVE DEFENSE

Failure to State Allegations

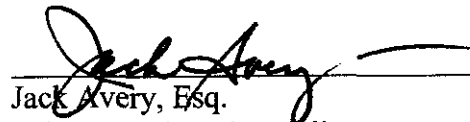
PERB Rule 520.3(d) requires, *inter alia*, a clear and complete statement of the facts constituting the *alleged* unfair labor practice. PERB Rule 520.11 provides that the party asserting a violation of the Comprehensive Merit Personnel Act (CMPA) has the burden of proving *allegations* of the complaint and PERB Rule 520.4 provides that the Respondent's answer shall, *inter alia*, state its position with respect to the *allegations* set forth in the complaint. The Complainant fails to satisfy these requirements by listing at least five paragraphs in his pleading that do not contain assertions, claims, declarations or statements of a party to an action, made in a pleading, setting forth what he expects to prove. Blacks Law Dictionary, Fifth Edition. Therefore, the "Motion for Amendment to Complaint" must be dismissed.

WHEREFORE, the Respondent Agency respectfully requests the Board to dismiss the
"Motion For Amendment to Complaint" in its entirety, with prejudice.

Respectfully submitted this 2nd day of May, 2002.

For the Agency- Respondents:

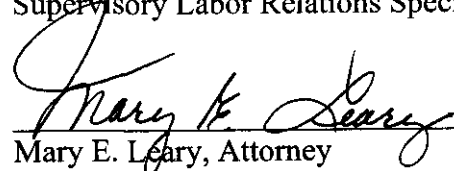
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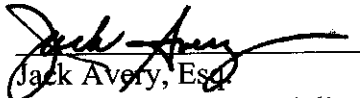
CERTIFICATE OF SERVICE

The undersigned certifies that on May 2, 2002 a true and correct copy of the foregoing **Agency-Respondent's Answer to The Motion for Amendment to Complaint** was served via First Class mail, postage prepaid upon the following:

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William Dupree,
Chairman
Fraternal Order of Police
DOC, 711 4th Street, N.W.
Washington, D.C. 20001
(202) 737 1892

Date: May 2, 2002



Jack Avery, Esq.
Labor Relations Specialist

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE,

COMPLAINANT,

v.

**THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS**

and

**THE FRATERNAL ORDER OF
POLICE,**

RESPONDENTS

PERB Case No. 02-U-15

**AGENCY-RESPONDENT'S ANSWER TO THE MOTION FOR AMENDMENT TO
COMPLAINT**

The District of Columbia Department of Corrections ("Respondent" or "Agency"), through the Office of Labor Relations and Collective Bargaining (OLRCB), answers the allegations in the above referenced Motion/Complaint as follows:

1. The statements in paragraph 1,2,3,4, and 5 failed to state a claim upon which relief can be granted, and therefore, are denied in their entirety.
2. Paragraph 6 is denied in its entirety.
3. Paragraph 7 is denied in its entirety.
4. The Agency is unable to determine whether Complainant's pleading is a motion, complaint, amendment to a complaint or an answer to his own original complaint. As

such, Agency-Respondent requests the Executive Director or the Board to dismiss the filing, with prejudice.

5. The Agency reincorporates the Answer, Affirmative Defenses, and Motion to dismiss filed in this action on April 22, 2002.

ADDITIONAL AFFIRMATIVE DEFENSE

Failure to State Allegations

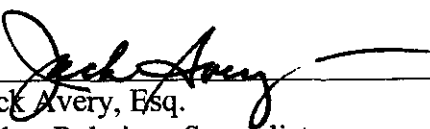
PERB Rule 520.3(d) requires, *inter alia*, a clear and complete statement of the facts constituting the *alleged* unfair labor practice. PERB Rule 520.11 provides that the party asserting a violation of the Comprehensive Merit Personnel Act (CMPA) has the burden of proving *allegations* of the complaint and PERB Rule 520.4 provides that the Respondent's answer shall, *inter alia*, state its position with respect to the *allegations* set forth in the complaint. The Complainant fails to satisfy these requirements by listing at least five paragraphs in his pleading that do not contain assertions, claims, declarations or statements of a party to an action, made in a pleading, setting forth what he expects to prove. Blacks Law Dictionary, Fifth Edition. Therefore, the "Motion for Amendment to Complaint" must be dismissed.

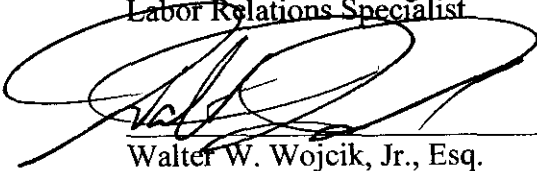
WHEREFORE, the Respondent Agency respectfully requests the Board to dismiss the
“Motion For Amendment to Complaint” in its entirety, with prejudice.

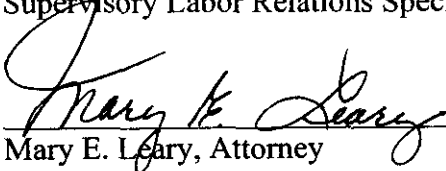
Respectfully submitted this 2nd day of May, 2002.

For the Agency- Respondents:

D.C. OFFICE OF LABOR RELATIONS AND COLLECTIVE BARGAINING
441 4th Street, NW, Suite 840 North
Washington, DC 20001
Tel.: (202) 724-4953
Fax: (202) 727-6887



Jack Avery, Esq.
Labor Relations Specialist

Walter W. Wojcik, Jr., Esq.
Supervisory Labor Relations Specialist

Mary E. Leary, Attorney
Director


CERTIFICATE OF SERVICE

The undersigned certifies that on May 2, 2002 a true and correct copy of the foregoing **Agency-Respondent's Answer to The Motion for Amendment to Complaint** was served via First Class mail, postage prepaid upon the following:

Carl L. White
3432 'N' Street S.E.
Washington, DC 20019
(202) 584-8221

William Dupree,
Chairman
Fraternal Order of Police
DOC, 711 4th Street, N.W.
Washington, D.C. 20001
(202) 737 1892

Date: May 2, 2002



Jack Avery, Esq.
Labor Relations Specialist

BEFORE THE PUBLIC EMPLOYEE RELATION BOARD
GOVERNMENT OF THE DISTRICT OF COLUMBIA

CARL L. WHITE,

Complainant,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS;
FRATERNAL ORDER OF
POLICE/DEPARTMENT OF
CORRECTIONS LABOR
COMMITTEE,

Respondents.

PERB Case No. 02-U-15

**ANSWER OF FRATERNAL ORDER OF POLICE/
DEPARTMENT OF CORRECTIONS LABOR COMMITTEE**

Fraternal Order of Police/Department of Corrections Labor Committee ("FOP/DOC LC"), the exclusive certified bargaining representative for all non-managerial/non-supervisory employees of the Department of Corrections, presents this Answer to the Complaint in Case No. 02-U-15.

JURISDICTION

1. FOP/DOC LC denies the allegations of paragraph 1 of the Complaint.

PARTIES

2. FOP/DOC LC is without sufficient information to admit or deny the truth of the allegations of paragraph 2 of the Complaint, and therefore, deems such allegations to be denied.

3. FOP/DOC LC admits the allegations of paragraph 3 of the Complaint.

FACTS

4. FOP/DOC LC is without sufficient information to admit or deny the truth of the allegations of paragraph 4 of the Complaint, and therefore, deems such allegations to be denied.

5. FOP/DOC LC denies the allegations of paragraph 5 of the Complaint, except that it is admitted that between June 1, 2000 and through May 31, 2002, William Dupree serves as the duly-elected Chairman of the FOP/DOC LC.

6. FOP/DOC LC denies the allegations of paragraph 6 of the Complaint.

7. FOP/DOC LC denies the allegations of paragraph 7 of the Complaint.

8. FOP/DOC LC denies the allegations of paragraph 8 of the Complaint.

9. FOP/DOC LC denies the allegations of paragraph 9 of the Complaint.

10. FOP/DOC LC denies the allegations of paragraph 10 of the Complaint.

11. FOP/DOC LC denies the allegations of paragraph 11 of the Complaint.

12. FOP/DOC LC denies the allegations of paragraph 12 of the Complaint.

13. FOP/DOC LC is without sufficient information to admit or deny the truth of the allegations of paragraph 13 of the Complaint, and therefore, deems such allegations to be denied.

14. FOP/DOC LC is without sufficient information to admit or deny the truth of the allegations of paragraph 14 of the Complaint, and therefore, deems such allegations to be denied.

ALLEGED UNFAIR LABOR PRACTICES

15. FOP/DOC LC denies the allegations of paragraph 15 of the Complaint.

16. FOP/DOC LC denies the allegations of paragraph 16 of the Complaint.

RELIEF SOUGHT

17. FOP/DOC LC denies the allegations of paragraph 17 of the Complaint.

18. FOP/DOC LC denies the allegations of paragraph 18 of the Complaint.

19. FOP/DOC LC denies the allegations of paragraph 19 of the Complaint.

RELATED PROCEEDINGS

20. FOP/DOC LC is without sufficient information to admit or deny the truth of the allegations of paragraph 20 of the Complaint.

MOTION FOR ADMINISTRATIVE DISMISSAL

FOP/DOC LC moves that it be dismissed from further proceedings in this case on the grounds that Complainant Carl L. White has continuously been employed by the Department of Corrections as a "management employee" under the Management Supervisory Service pursuant to D.C. Code § 1-609.51 since October, 1995. Complainant has not been an employee within the collective bargaining unit certified in PERB Case No. 93-R-04, Certification No. 73, since October, 1995.

Where the allegations of paragraphs 9 to 14 of the Complaint assert a loss of status as a bargaining unit employee after October, 1995, such allegations are barred by the provisions of D.C. Code § 1-609.51 and regulations of the Government of the District of Columbia relating to the Management Supervisory Service. The Public Employee Relations Board lacks jurisdiction over the allegations of this complaint pursuant to D.C. Code § 1-605.02 and PERB Rule 520.4.

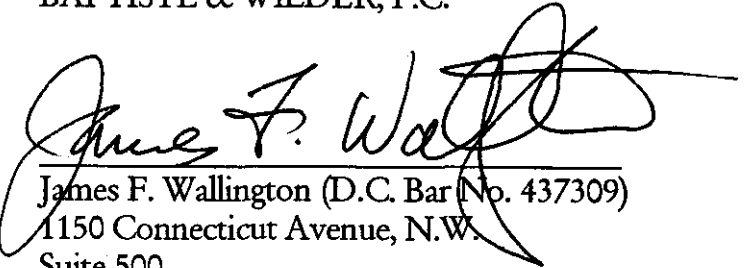
For the foregoing reasons, FOP/DOC LC requests that the Complaint be dismissed in its entirety.

Respectfully submitted,

FRATERNAL ORDER OF POLICE/
DEPARTMENT OF CORRECTIONS
LABOR COMMITTEE,

By Counsel:

BAPTISTE & WILDER, P.C.

A handwritten signature in black ink, appearing to read "James F. Wallington", with a large, stylized flourish extending from the end of the signature.

James F. Wallington (D.C. Bar No. 437309)

1150 Connecticut Avenue, N.W.

Suite 500

Washington, D.C. 20036

(202) 223-0723

Date: April 24, 2002

CERTIFICATE OF SERVICE

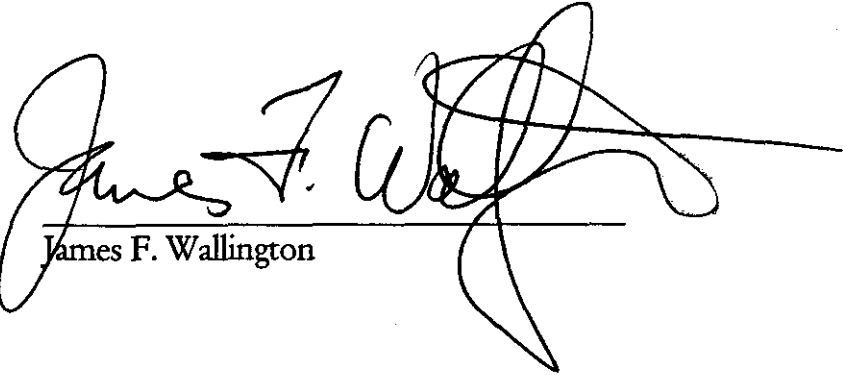
I hereby certify that true copies of the foregoing Answer of FOP/DOC LC have been served by U.S. Mail, postage prepaid, this 24th day of April, 2002 upon the following parties and representatives:

For Complainant:

Carl L. White
3432 "N" Street, S.E.
Washington, D.C. 20019

For Department of Corrections:

Mary E. Leary, Esq., Director
OLRCB
411 4th Street, N.W., Suite 200 South
Washington, D.C. 20001



James F. Wallington

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE, COMPLAINANT

V.

DISTRICT OF COLUMBIA DEPARTMENT OF
CORRECTIONS (AGENCY) AND THE
FRATERNAL ORDER OF POLICE (FOP),

AGENCY / RESPONDENTS

PERB CASE # 02-U-15

RECEIVED
MAY - 1 11 11 27
PUBLIC EMPLOYEE
RELATIONS BOARD

MOTION FOR TO EXTEND TIME TO FILE REPLY

The purpose of this motion is to request this Board to extend time to May 10, 2002, time having already expired, stating as follows:

1. This Board has already granted Complainant's amendment motion. The circumstances, which necessitated the earlier motion, have already been described.
2. Because of the unique nature of the legal questions presented in this matter, Complainant was required to undertake extensive legal research to determine the applicable authority for support of his position. This research took additional time, which had not been contemplated at the inception of this matter. The research has now been completed and the response is forthcoming.
3. Complainant has now contacted James F. Wallington, Esquire, on April 30, 2002, at 202-223-0723. Mr. Wallington concurred with the extension request.
4. Complainant contacted Jack Avery, Esquire, on April 30, 2002, at 202-724-4953. Mr. Avery did not concur with the request for extension of time.
5. Complainant was unable to contact Gregory Jackson, Esquire, on April 30, 2002. Mr. Jackson's secretary, Billie Cuba advised that he was not in his office.
6. Wherefore, for the reasons aforementioned, Complainant respectfully requests this Board to grant this motion.

Respectfully submitted,

Carl L. White

Carl L. White,
Complainant
3432 'N' Street S.E.
Washington, D.C. 20019
202-584-8221

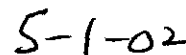
CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing motion were mailed, postage prepaid, this 1st day of May, 2002, to the following:

- ☐ Jack Avery, Esquire
441 4th Street N.W.
Suite 200 South
Washington, D.C. 20001
- ☐ James Wallington, Esquire
1150 Connecticut Avenue N.W.
Suite 500
Washington, D.C. 20036
- ☐ Gregory Jackson, Esquire
1923 Vermont Avenue N.W., 2nd Floor
Washington, D.C. 20001



Carl L. White



Date

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE,

COMPLAINANT,

v.

**THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS**

and

**THE FRATERNAL ORDER OF
POLICE,**

RESPONDENTS

PERB Case No. 02-U-15

AGENCY-RESPONDENT'S MOTION TO DISMISS

The Agency, pursuant to PERB Rule 553, moves to dismiss the above captioned complaint in its entirety, with prejudice. The basis for this motion is the fact that Complainant was a non-bargaining unit employee – a supervisor, within the Managerial Supervisory Service - and as such has no standing to bring claims of an unfair labor practice before the Public Employee Relations Board (PERB).

FACTS

The Complainant received a competitive promotion under the Career Services provisions of DPM Chapter 8, to the Supervisory Position of Correctional Program Officer, DS-12, effective 10/01/95. The Complainant's position of Correctional Program Officer, DS-12 was abolished with the privatization of the Correctional Treatment Facility by Correctional Corporation of America on March 15, 1997. The Complainant

was offered a position in the D.C. Jail, in the official capacity of Correctional Program Officer, DS-12, wherein, he supervised an unit of Correctional Treatment specialists, who provide case management services to the inmate population.¹

On August 27, 2000, the Complainant forfeited many of his personnel-related appeal rights by accepting a position within the Managerial Supervisory Services, converting his DS-12 position to an MS-12. This was the Complainant's official position of record until his mandatory retirement on December 15, 2001, pursuant to provisions of 5 U.S.C. 8336. The Correctional Program Services position is supervisory and is coded XAA (non-bargaining unit) in Section 34 of his Official Personnel Action Form One.²

On November 27, 2001, the Complainant was given an Advance Notice of Proposed Suspension. He was charged with negligence and incompetence for failing to properly supervise Correctional Treatment Specialist Cynthia Hackett, who failed to provide adequate Case Management services to Joseph Heard. As a result Heard was illegally incarcerated from October 13, 1999³ to May 2001.

The Complainant did not receive a Final Agency decision to the Advance Notice due to his election to retire effective December 15, 2001, notwithstanding his eligibility to work until December 31, 2001.

¹ The position of Correctional Program Officer and Supervisory Correctional Treatment Specialist are both supervisory and classified at the DS-12 grade level. The D.C. Office of Personnel determined that the two positions were so similar in duties and responsibilities that they offered the Complainant the position of Correctional Program Officer at the D.C. Jail. However, the Complainant may have been inadvertently referred to as a Supervisory Correctional Treatment Specialist in the November 27, 2001 Advance Notice of Proposed Suspension.

² See Exhibit "A" attached and incorporated by reference.

³ The date he should have been released.

The Complainant filed an internal complaint of discrimination with Fred Staten, Jr., EEO Officer on November 28, 2001⁴ claiming that the position of Correctional Program Officer to which he was promoted on October 1, 1995 should have been in the Collective Bargaining Unit.⁵ Coincidentally, the internal complaint of discrimination was filed one day after the Advance Notice of Proposed Suspension was issued.

The Complainant also filed a formal complaint of discrimination with the D.C. Office of Human Rights and cross-filed to the United States Equal Employment Opportunity Commission on January 30, 2002. The formal complaint makes no reference to the Complainant's promotion to Correctional Program Officer which was the basis of his Internal Complaint of Discrimination.

ARGUMENT

A. As a Supervisor, within the Management Supervisory Services, the Complainant Lacks Standing to Bring an Unfair Labor Practice Complaint.

The Complainant's position of Correctional Program Officer was a supervisory position. The position was inadvertently advertised in Vacancy Announcement, FL (23) 95-112 as being in the FOP Bargaining Unit. However, the Announcement indicated that the position involved supervisory and managerial duties. The Complainant was advised of the error before he took the position. Thus, the Complainant knew that he was not a member of the FOP bargaining unit or any DOC bargaining unit. Additionally, if any

⁴ Nearly 5 ½ years after he was promoted to the position and over a year after his acceptance of the MSS promotion.

⁵ The Complainant was advised and acknowledged that there was an error in the Position Vacancy Announcement. But the Announcement indicates in the section entitled "Brief Description of Duties," the **supervisory and managerial** duties of the position.

confusion could have existed, it was surely eliminated by the Complainant's acceptance of a Management Supervisory Services (MSS) appointment in 2000.

Supervisors such as the Complainant are explicitly excluded from coverage under the Comprehensive Merit Personnel Act (CMPA) at D.C.Code⁶ 1-617.01(3)(d) that provides although each employee of the D.C. government has the right to join a labor organization, a supervisor or management official does not have the right. Additionally, D.C. Code 1-617.09(b)(1) provides, in pertinent part:

A unit shall not be established if it includes the following: (1) Any management official or supervisor...

Additionally, the MSS, which the Complainant is employed, expressly precludes bargaining unit employees. D.C. Code Section 1-609.52 states,

(b) Consistent with the provisions of subchapter XVII of this chapter, any individual occupying a position included in a recognized collective bargaining unit shall not be included in the Management Supervisory Service.

Even the Collective Bargaining Agreement (CBA) that was operative at the time of Complainant's promotion on October 1, 1995 provides in Article 1, RECOGNITION, "The employer recognizes the Union as the exclusive representative of all employees of the D.C. Department of Corrections excluding management employees, confidential employees, supervisors...."

While the Complainant alleged that his position as a Correctional Program Officer was not supervisory, he referred to himself as Chief Case Manager in certain correspondence.⁷ The CMPA excludes both supervisor and managers from its coverage. The Complainant having been a shop steward before his promotion on October 1, 1995 to

⁶ All references to the D.C. Official Code are to the 2001 Ed.

⁷ See Exhibit "B" attached and incorporated by reference. It is a Memorandum to the Director of the D.C. Department of Corrections dated May 5, 1998 from the Complainant.

Correctional Program Officer, DS-12, surely knows that even as a manager, as he called himself, he was excluded from the protection of the CMPA.

The Complainant incorrectly alleges that the PERB has jurisdiction over the Unfair Labor Complaint he filed. He does not allege a violation of D.C. Code 1-617.04⁸, but even if he had the PERB does not have jurisdiction because the Complainant's MSS supervisory position excludes him from the protections of the Labor Relations Subchapter of the Comprehensive Merit Personnel Act.

Since the Complainant was not a member of a bargaining unit he had no standing to allege an unfair labor practice (ULP) against the Agency. As such, the Agency respectfully requests the Board to dismiss the Complaint in its entirety, with prejudice.

B. The Complainant Lacks Standing to Raise a Contractual Claim or a Representational Claim Before the Board.

Although extremely difficult to decipher, the Complainant's claims may be loosely contractual or representational in nature. His claims involve determining whether the position to which he was promoted should have been classified as being within the bargaining unit. Of course the Complainant has no standing to assert the claim under the provisions of the CBA since, as a supervisor, he is not a member of the bargaining unit. In any case, the Complainant cannot properly file a contractual claim before the Board. Additionally, the Complainant clearly lacks standing under the PERB rules to file a clarification or modification petition.

D.C.Code Section 1-617.04(a)(5) provides, "[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative." The Complainant has no standing to assert this claim

⁸ The D.C. Code section which indicates the elements of an Unfair Labor Practice.

against the Agency because he is not a representative of the FOP. Therefore the Agency has no duty to bargain with him. Additionally the Complainant seems confused because he filed this ULP and made these allegations against the FOP, the exclusive representative of the bargaining unit.

D.C. Code 1-617.04(a)(5) protects and enforces employee rights and employer obligations by making their violation an unfair labor practice. However, in determining a violation of this obligation, the PERB has always made a distinction between obligation that are statutorily imposed under the CMPA and those obligations that are contractually agreed-upon between the parties. The CMPA provides for the resolution of the former, while the parties have contractually provided for the resolution of the latter, vis-à-vis, the grievance and arbitration process contained in their collective bargaining agreement.⁹ Therefore, the PERB has concluded, that it lacks jurisdiction over alleged violations that are strictly contractual in nature. American Federation of State, County, and Municipal Employees, Local 2921 v. District of Columbia Public Schools, 42 DCR 5685, Op. No. 339, PERB Case No. 92-U-08 (1992). *See also*, Washington Teachers' Union, Local 6, American Federation of Teachers, AFL-CIO v. District of Columbia Public Schools, 42 DCR 5488, Slip Op.No. 337, PERB Case No. 92-U-18 (1995).

Finally, to the extent the Complainant is seeking to clarify the certified unit description, an unfair labor practice is an improper tool. A PERB Rule 504 Modification or a Rule 506 Clarification may only be filed by an employing entity or by a labor organization. If the Complainant is seeking to review the existing certification, the Complainant is barred due to lack of standing.

⁹ A dispute currently exists as to whether the FOP and the Agency are parties to any collective bargaining agreement. That dispute is before the Board in several unrelated cases.

Even if his claims were true, the Complainant is simply barred from raising contractual or representational matters before the Board. As such, the Agency respectfully requests the Board to dismiss the Complaint in its entirety, with prejudice.

C. Even Assuming the Veracity of Complainant's Most Outlandish Accusations, the Complainant Has Failed to Allege Any Claim Upon Which Relief Can Be Granted.

The Board has found that an alleged discriminatory act by a District government agency with respect to an employee's term or condition of employment must be motivated by an intent to encourage or discourage membership in any labor organization in order to demonstrate a unfair labor practice based upon discrimination. Butler, et al. and The Department of Corrections, 49 DCR 1152 (February 8, 2002) Teamsters, Local Union 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. D.C. Public Schools, 43 DCR 5585, Slip Op. No. 375, **PERB** Case No. 93-U-11 (1994).

The Complainant's absurd allegations that he was the subject of collusion between the Agency and the Union to discriminate against him, do not fall within the elements of any unfair labor practice. Nor does the Complainant's allegations that the position of Correctional Program Officer was non-supervisory and lowered his "standing in the Agency's organizational structure" satisfy the elements of an unfair labor practice under the CMPA at D.C.Code 1-617.04. Even if they did the Complainant has no standing as a supervisor to assert them.

Since the Complainant retired early, he avoided the proposed suspension for negligence and incompetence, so he did not suffer any harm as he alleges. Nor is he

entitled to back pay since he was always paid from October 1, 1995 to his retirement as a Correctional Program Officer, MS-12.

Since the Complainant has failed to allege any claim upon which the Board may grant him relief and since the Complainant has not alleged any actual damages which the Board could remedy, the Agency respectfully requests the Board to dismiss this matter in its entirety, with prejudice.

CONCLUSION

The Complainant was promoted to the position of Correctional Program Officer DS-12 effective October 1, 1995, and later accepted a position within the newly created MSS as a MS-12 Correctional Program Officer. These positions were unquestioningly supervisory and were excluded from the bargaining unit by statute. The Complainant was aware of the supervisory nature of the position. None of the Complainant's allegations of an unfair labor practice satisfy the statutory elements of Section 1-617.04 of the CMPA, (D.C.Code Section 1-617.04). While the Complainant's alleged claims might have some contractual basis, he has no standing to have them resolved under the grievance and arbitration process contained in bargaining unit CBA, because, as a supervisor, he is excluded from membership in the bargaining unit.

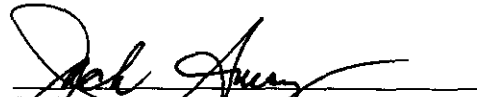
It appears that the internal complaint of discrimination and the filing of a formal complaint with the D.C.Office of Human Rights and the cross complaint with the U.S. Equal Employment Opportunity Office were all motivated by the Complainant receiving the Advance Notice of Proposed Suspension on November 27, 2001. He filed the internal complaint of discrimination one day afterwards on November 28,2001.

Therefore, based on the foregoing, the Agency respectfully requests that PERB
dismiss the Unfair Labor Practice Complaint in its entirety, with prejudice.


Respectfully submitted this 22nd day of April, 2002,

For the Respondents:

District of Columbia Office of Labor
Relations and Collective Bargaining
441 4th Street, NW, Suite 200 S
Washington, D.C. 20001
Tel: (202) 4953
Fax (202) 6887



Jack Avery, Esq.
Labor Relations Specialist



Walter W. Wojcik, Jr., Esq.
Supervisory Labor Relations
Specialist

Mary E. Leary, Esq., Director

Apr-18-02 11:24am

From-CORRECTIONS CONTRACTS PROCUREMENT

2026733448

T-841 P.21/40 F-758

OF THE

PERSONNEL ACTION

(REV. 2/81)

DISTRICT OF COLUMBIA		ORIGINATING AGENCY		CORRECTIONS	
TRANSACTION CODE 12123		SOCIAL SECURITY NUMBER 578-58-7515		2. NAME LAST FIRST MIDDLE WHITE, CARL L	
3. DATE/ACTION NO. 218639		4. EFFECT DATE MO DY YR 10 01 95		5. DATE OF BIRTH 09 08 43	
6. ADDRESS 2300 GOOD HOPE RD SE		7. CITY STATE ZIP 014 018 20020		8. PHYSICAL HANDICAP 04	
9. VETERANS PREFERENCE 1 NONE 2 5 PT 3 10 PT DISAB 4 10 PT COMP 5 10 PT OTHER 1		10. NATURE OF ACTION/CODE 7025 PROM (PROB) SUPPLY		11. EMPLOYMENT DATE MO DY YR 12 14 81	
12. SERVICE COMP DATE MO DY YR 12 14 81		13. OC SERVICE COMP DATE MO DY YR 12 14 81		14. FEGLI REGULAR 1 COVERED 2 INELIGIBLE 3 WAIVED 3	
15. FROM POSITION TITLE AND NUMBER CORRECTIONAL TREATMENT SPEC 0056448/N		16. PAY SCHEDULE SERIES DS 00101		17. GRADE STEP 11 J4	
18. CORRECTIONAL TREATMENT FACILITY		19. SALARY 37814		20. FLAG 30.00	
21. PAY SCHEDULE SERIES DS 00008		22. GRADE STEP 11 J4		23. SALARY 40295	
24. CORRECTIONAL TREATMENT FACILITY		25. SALARY 40295		26. FLAG 30.00	
27. PAY SCHEDULE SERIES DS 00008		28. GRADE STEP 11 J4		29. SALARY 40295	
30. CORRECTIONAL TREATMENT FACILITY		31. SALARY 40295		32. FLAG 30.00	
33. LABOR DISTRIBUTION RULE IS CERTIFIED CORRECT		34. RETIREMENT 01 CS RETIRE 02 CS RETIRE 03 POLICE/FIRE 04 JUDGES (3%)		35. JUDGES (3%) 05 JUDGES (3%) 06 JUDGES (3%) 07 RESERVED 08 UDC (10%)	
36. AGENCY CONTROLLER OR DESIGNEE		37. CORRESPONDING GRADE		38. SERVICE CODE 026 34	
39. PAY GROUP 01		40. RETAINED GRADE		41. EXPIRATION DATE MO DY YR	
42. EMPLOYMENT TYPE 1 FULL TIME 2 PART TIME 3 FULL TIME TEMP 4 PART TIME TEMP 5 INTERMITTENT		43. POSITION TYPE 1 CAREER 2 EDUCATIONAL 3 EXECUTIVE 4 EXCEPTED		44. TERMINATION CODE 1 RESIGN 2 RETIRE 3 TRANSFER 4 MILITARY 5 DECEASED 6 TERMINATED 7 VOLUNTARY SEPARATION 8 INVOLUNTARY SEPARATION	
45. CERTIFICATE TO EMPLOY NO XX00053		46. FUND 1000		47. AGENCY 1000	
48. RULE 1000		49. YR 1000		50. RESP CENTER 1000	
51. POSPSF 1000		52. MRU 1000		53. ARC 1000	
54. ORC 1000		55. JOB 1000		56. ACTIVITY 1000	
57. ITEM 1000		58. 1000		59. 1000	
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Government of the District of Columbia
DEPARTMENT OF CORRECTIONS
Detention Facility
1901 D Street, S.E.
Washington, D.C. 20003
202-673-8500

MEMORANDUM

TO: Margaret Moore,
Director, D.C. Department of Corrections

THROUGH: John H. Thomas,
Executive Deputy Director

Adrienne R. Poteat,
Director of Institutions

Mario L. Randle,
Acting Warden

Shirley Williams,
Acting Deputy Warden for Programs

FROM: Carl L. White 5/5/98
Carl L. White, Correctional Program Officer, DS 0006-12

DATE: May 5, 1998

SUBJECT: Requesting Review of Annual Performance

This writer received his yearly rating on Thursday, April 21, 1998. Pursuant to District Personnel Manual Chapter 14, the purpose of this memorandum is to determine whether this writer's supervisor, Acting Deputy Warden for Programs, Ms. Shirley Williams' judgment of an excellent rating was motivated alone by malice at the Central Detention Facility (CDF). The reason for the request is to determine whether or not his excellent rating would prejudice this writer on the retention list or possibly promotion.

EXHIBIT "B"

Manager raises the following issues:

1. Undisputed judgment raises the bar for an outstanding rating.
2. Compliance with work instructions gave rise to the level of outrageous conduct.
3. Orderliness in work place: employee is in the zone of danger.
4. Observance of rules, including safety is a breach of District Personnel Chapter 14.

1. Undisputed Judgment Raises the Bar For An Outstanding Rating

In an attempt to preclude this manager from a outstanding rating, Ms. Williams asserts that manager is unable to make clear, well defined break between union and management and could find himself in a challenged position. Ms Williams characterizes her comments as undisputed when, in fact, the record clearly shows quite the opposite. Manager's Position Description, DS-0006-12-04-5, states the incumbent functions as an operational manager of an assigned housing unit, and is responsible for supervising and directing the activities of a multidisciplinary team of staff members who are assigned to work within the unit. (See attachment #1). However, according to the D.C. Office of Personnel, the job description for Supervisory Case Manager does not exist.

This writer's office is assigned to the second floor as Chief, Case Manager of Unit II, next to Chief, Case Manager of Unit I, Mr. Seth Vaughn. Both chiefs supervise nine case managers under their purview. Currently, two secretaries are assigned to the second floor, while the case manager's office space is located within the inmate housing unit. Ms. Williams' working space is also located on the second floor in the Case Management Unit, while other deputy wardens are assigned to the first floor.

On numerous occasions this writer's judgment has requested keys to his assigned work area in the Case Management Unit on the second floor, leading to the copier room, clerical area and the rest room without success for over a year through monthly reports. (See attachment #2).

CDF Policy 5021 - 1B, Key Control, dated July 3, 1997, disclosed during discovery, revealed specific responsibilities for the issue, distribution and control of all keys assigned within the CDF. (See attachment #3). This is one of the occurrences that the Acting Deputy Warden for Programs gives reference to in her comments "unable to make a clear well defined break between union and management". Manager is being prejudiced because he is a former shop steward, prior to current position with the American Federation of Government Employee (AFGE) and Teamsters. Ms. Williams'

actions of controlling both chief's key ring is not consistent with CDF's own written policy and requested keys have never materialized. A truly disputed question is how did non-supervisory employees obtain keys to certain doors that the chiefs don't possess. The Key Control Policy also says "The Institutional Training Coordinator shall be responsible for ensuring that all new employees are thoroughly familiar with the procedure outlined in reference to "Key Control"

Whether the Acting Deputy Warden's conduct can be extreme and outrageous depends on facts of this case. Numerous memorandums addressing various correctional settings have prejudice this employee in terms of judgment

2. Compliance With Work Instructions Gave Rise To The Level Of Outragenus Conduct

Manager's second contention that facts are in dispute is the statement "at times in his dealings with inmates, he negates continued professionalism". This writer's Position Description again states "consults with institutional administration, security personnel and inmates as necessary in the resolution of emergency or extraordinary correctional problems". However, this manager has chaired the Inmate Grievance Advisory Committee (IGAC) on a monthly basis for over one year. Compliance Monitor, Gloria Thaxton stated that IGAC chairman has made an astronomical difference in keeping the CDF in compliance with the Women vs District of Columbia and Franklin vs District of Columbia during this rating period. Employee has worked above and beyond the call of duty for the entire inmate population. A truly disputed question is employee being prejudiced and why not delegate the other chief the responsibility. It is alleged that he received an outstanding rating with less responsibility and was transferred to CDF six months ago from Maximum Security. While this manager was assigned to CDF on March 17, 1997, from the retention list, due to reduction in force from the Correctional Treatment Facility (CTF)

In attentive record keeping of this employee's position description and policy deviation is abundant. Ms. Williams failed to make this writer aware of the performance requirements of the position he occupies; recognizing meritorious efforts requesting various support services to all IGAC meeting and drug treatment employees for the detail inmates. It is incomprehensible to this writer that such indifference and inattentiveness can be accepted in general. Government rules, regulations and CDF's own policy are promulgated to avoid the situation that occurred during this rating period. The record is clearly in dispute, how can Ms. Williams rate this manager when she was not aware of Position Description as noted on the P.O. Form 12 as Supervisory Case Manager.

That is why proper procedures are in place, because without procedures, the conduct of the Acting Deputy Warden would be extreme and outrageous! District Personnel Chapter 14 and CDF's own policies are mandated to prevent a situation in which there is a high degree of probability that severe outrageous conduct and emotional distress will follow and Ms. Williams goes ahead in conscious disregard of good faith. Manager was entitled to protection.

3. Orderliness in Work Place: Manager in the Zone of Danger

Ms. Williams' rating misses the point. Here, not knowing the job description, prejudice this entire rating period is sufficient, standing alone, for outrageous conduct. Here, we not only have lack of knowledge of Post Description, but how is his skills different to the other Chief Case Manager. We also have violations of facility policy in terms of key control and the District of Columbia Municipal Regulations Chapter 14. These regulations and internal procedures are designed to protect this employee, and those similarly situated from conduct that if not followed, can amount to extreme outrageous behavior.

Compliance Monitor, Gloria Thaxton, Violet Hicks, Warden's office and inmates participating with the IGAC testimony will link the casual connection of Ms. Williams' negligent statement about lack of professionalism with the inmates.

This manager contends that he was within the zone of danger required because his harm began with being a former shop steward. This manager further acknowledges that the Deputy Warden for Programs office created an inequitable situation in directing all case managers to work the "Lorton Desk" (See attachment #4). This assignment was normally assigned to Unit I and not assigning case managers from Unit II to work the intake process under the purview of Unit II. Building on the work of her predecessors, Patricia Temoney and Mario Randle, Ms. Williams prejudiced this rating purview when she wrote define break between union and management. Again, the CDF's own policy and District rules and regulations are in place to avoid the negligent conduct that occurred in this case. Based on the record, the manager is within the zone of danger.

4. Observance of Rules, Including Safety Is A Breach of District Personnel Chapter 14

Here, this manager is challenging the entire excellent rating without supporting documents, as a result, this writer suffered prejudice in terms of possible promotion and standing on the retention list. Therefore, Acting Deputy Warden for Programs under this scenario as well, Ms. Williams' oversight cannot be considered sound strategy, nor can it be considered reasonable professional representation under the prevailing professional norms.

Comments in the rating are clearly improper. They include, in rebuttal, the rater's personal opinion regarding this writer, and her attempt to shift the burden of proof to this manager on a material issue. This appeal preserves error review under the standard of substantial prejudices rather than the stringent plain error standard. No indication on the P.O. Form 12 for "Observance of rules, including Safety" by plus (+), check or minus (-) was left for review under the demanding plain error standard. Under no circumstance can this oversight be justified as sound strategy, or as a reasonable tactical decision. There is reasonable probability that absent the errors of the rater, the result of the rating period would have been an outstanding rating.

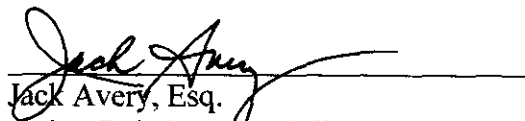
CERTIFICATE OF SERVICE

The undersigned certifies that on April 22, 2002 a true and correct copy of the foregoing **Agency's Motion to Dismiss** was served via first Class mail, postage prepaid upon the following:

Carl L. White
3432 'N' Street S.E.
Washington, DC 20019
(202) 584-8221

William Dupree,
Chairman
Fraternal Order of Police
DOC, 711 4th Street, N.W.
Washington, D.C. 20001
(202) 737 1892

Date: April 22, 2002


Jack Avery, Esq.
Labor Relations Specialist

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE,

COMPLAINANT,

v.

**THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS**

and

**THE FRATERNAL ORDER OF
POLICE,**

RESPONDENTS

PERB Case No. 02-U-15

**AGENCY-RESPONDENT'S ANSWER TO UNFAIR LABOR PRACTICE
COMPLAINT**

The District of Columbia Department of Corrections ("Respondent" or "Agency"), through the Office of Labor Relations and Collective Bargaining (OLRCB), answers the allegations in the above captioned Complaint as follows:

1. To the extent the allegation in paragraph 1 is a conclusion of law, for which no response is necessary, it is therefore denied by the Agency. As additional information, the Agency denies the Public Employee Relations Board (PERB) ("Board") has jurisdiction because the Complainant was a supervisor, clearly outside of the bargaining unit, at all times alleged in his complaint and has no standing to assert an unfair labor practice under the Comprehensive Merit

Personnel Act (CMPA). Additionally, assuming *arguendo* that Complainant had standing, no complaint for which relief can be granted has been raised.

2. The Agency responds to the allegations in Paragraph 2, as follows:

- a. The Agency denies the allegation in the first sentence. The Complainant was moved from the District Service Schedule to the Managerial Supervisory schedule in September 2000, moving from a DS-12 to a MS-12.
- b. The allegations in the second sentence are ambiguous, as they are not identified by any specific period. To the extent that any response is required, the allegations are denied.
- c. The Agency admits the allegations in the third sentence.
- d. The Agency is without sufficient knowledge to admit or deny whether “Supervisory Correctional Treatment Specialist” was never Complainant’s job title, therefore denies said allegation. The Agency admits all remaining allegations in the fourth sentence.
- e. The Agency admits the Complainant was charged with negligence and incompetence as stated in the fifth sentence.
- f. The Agency admits the allegations in the sixth sentence.
- g. The Agency admits the allegations in the seventh sentence.
- h. The Agency admits the Complainant was provided with at least 60-days advance notice of his impending Title 5 U.S.C. Section 8335(b) mandatory retirement, as stated in the eighth sentence. The

Respondent lacks sufficient information as to the exact date of the service of the notification and therefore denies said allegation.

3. The Agency admits the allegations in paragraph 3
4. The Agency admits the allegations in paragraph 4 that Fred Staten is an EEO Officer, but is without sufficient knowledge to admit or deny the remaining allegations, and therefore denies those allegations.
5. The Agency admits that Mr. William Dupree is the Chairman of the Fraternal Order of Police Department of Corrections Labor Committee. The Agency was advised of Mr. Dupree's installation as Chairman on or about June 2000. The Agency is without sufficient information to admit or deny the remaining allegations in paragraph 5, and therefore denies those allegations.
6. To the extent the allegations in paragraph 6 are conclusions of law, for which no response is necessary, they are therefore denied by the Agency. The Agency denies all remaining allegations in paragraph 6.
7. The Complainant accepted a position within the Managerial Supervisory Services (MSS) as an at-will employee on or about August 27, 2000. The Complainant admits "Position Vacancy Announcement Number FL(23)95-112", drafted in 1995, improperly indicated "Position Correctional Prog. Officer. DS-006-12" was within the bargaining unit. The Agency denies that the Correctional Program Officer position was "non-supervisory." The Agency denies the remaining allegations in paragraph 7.
8. The statement in paragraph 8 is incomprehensible and is therefore denied.
9. The statement in paragraph 9 is incomprehensible and is therefore denied.

10. The statement in paragraph 10 is incomprehensible and is therefore denied. To the extent the allegation in paragraph 10 is a conclusion of law, for which no response is necessary, it is therefore denied.

11. The statement in paragraph 11 is incomprehensible and is therefore denied. To the extent the allegation in paragraph 11 is a conclusion of law, for which no response is necessary, it is therefore denied.

12. The Agency denies the allegations in paragraph 12.

13. The Agency admits that Complaint retired effective December 15, 2001. All remaining allegations are denied.

14. The Agency is without sufficient information to respond to the mental conditions of the Complainant and therefore denies said allegations. To the extent that allegations in paragraph 14 constitute conclusions of law, for which no response is necessary, the Agency denies said allegations. The Agency denies all remaining allegations in paragraph 14.

15. To the extent that allegation in paragraph 15 is a conclusion of law, for which no response is necessary, the Agency denies said allegation. The Agency denies all remaining allegations in paragraph 15.

16. The allegation in paragraph 16 is a conclusion of law, for which no response is necessary and is therefore denied by the Agency.

17. Paragraphs 17, 18, and 19 are prayers for relief to which no answer is required.

AFFIRMATIVE DEFENSES

Timeliness

Although the Agency is unable to decipher the date of occurrence of the perceived allegation from the text of the Complaint, it appears that certain allegations occurred as early as 1995, well beyond the 120-day timely filing requirement. PERB Rule 520.4. Those allegations outside of the 120-filing period should be dismissed by the Board, with prejudice.

Standing

The Complainant, an at-will Managerial Supervisory Service, non-bargaining unit employee, lacks standing to file an unfair labor practice complaint under Section 1-617.04 of the D.C. Official Code.

Lack of Subject Matter Jurisdiction

The Board lacks subject matter jurisdiction to hear the Complainant's allegations related to Federal Title VII discrimination, prohibited personnel practices, the Administrative Procedure Act, Section 1983 of the Civil Rights Act and the United States Constitution. As such, the Board should dismiss the Complaint with prejudice.

Failure to State a Claim Upon Which Relief May Be Granted

The Respondent has failed to state a single cause of action which may be brought before the Board. As such, the Board should dismiss the Complaint with prejudice.


WHEREFORE, the Agency respectfully requests the Board to dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted this 22nd day of April, 2002.

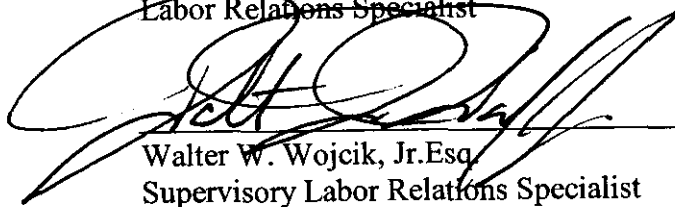
For the Respondents:

D.C. Office of Labor Relations and Collective Bargaining

441 4th Street, NW, Suite 200 South
Washington, DC 20001
Tel.: (202) 724-4953
Fax: (202) 727-6887



Jack Avery, Esq.
Labor Relations Specialist



Walter W. Wojcik, Jr. Esq.
Supervisory Labor Relations Specialist

Mary Leary, Esq. Director


CERTIFICATE OF SERVICE

The undersigned certifies that on April 22, 2002 a true and correct copy of the foregoing **Agency's Answer to Unfair Labor Practice Complaint** was served via first Class mail, postage prepaid upon the following:

Carl L. White
3432 'N' Street S.E.
Washington, DC 20019
(202) 584-8221

William Dupree,
Chairman
Fraternal Order of Police
DOC, 711 4th Street, N.W.
Washington, D.C. 20001
(202) 737 1892

Date: April 22, 2002



Jack Avery, Esq.
Labor Relations Specialist

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE, COMPLAINANT

V.

DISTRICT OF COLUMBIA DEPARTMENT OF
CORRECTIONS (AGENCY) AND THE
FRATERNAL ORDER OF POLICE (FOP),

AGENCY / RESPONDENTS

PERB CASE # 02-U-15

MOTION FOR TO EXTEND TIME TO FILE REPLY

The purpose of this motion is to request this Board to extend time to May 10, 2002, time having already expired, stating as follows:

1. This Board has already granted Complainant's amendment motion. The circumstances, which necessitated the earlier motion, have already been described.
2. Because of the unique nature of the legal questions presented in this matter, Complainant was required to undertake extensive legal research to determine the applicable authority for support of his position. This research took additional time, which had not been contemplated at the inception of this matter. The research has now been completed and the response is forthcoming.
3. Complainant has now contacted James F. Wallington, Esquire, on April 30, 2002, at 202-223-0723. Mr. Wallington concurred with the extension request.
4. Complainant contacted Jack Avery, Esquire, on April 30, 2002, at 202-724-4953. Mr. Avery did not concur with the request for extension of time.
5. Complainant was unable to contact Gregory Jackson, Esquire, on April 30, 2002. Mr. Jackson's secretary, Billie Cuba advised that he was not in his office.
6. Wherefore, for the reasons aforementioned, Complainant respectfully requests this Board to grant this motion.

Respectfully submitted,

Carl L. White

Carl L. White,
Complainant
3432 'N' Street S.E.
Washington, D.C. 20019
202-584-8221

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing motion were mailed, postage prepaid, this 1st day of May, 2002, to the following:

- ☐ Jack Avery, Esquire
441 4th Street N.W.
Suite 200 South
Washington, D.C. 20001
- ☐ James Wallington, Esquire
1150 Connecticut Avenue N.W.
Suite 500
Washington, D.C. 20036
- ☐ Gregory Jackson, Esquire
1923 Vermont Avenue N.W., 2nd Floor
Washington, D.C. 20001



Carl L. White



Date

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE,

COMPLAINANT,

v.

**THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS**

and

**THE FRATERNAL ORDER OF
POLICE,**

RESPONDENTS

PERB Case No. 02-U-15

AGENCY-RESPONDENT'S MOTION TO DISMISS

The Agency, pursuant to PERB Rule 553, moves to dismiss the above captioned complaint in its entirety, with prejudice. The basis for this motion is the fact that Complainant was a non-bargaining unit employee – a supervisor, within the Managerial Supervisory Service - and as such has no standing to bring claims of an unfair labor practice before the Public Employee Relations Board (PERB).

FACTS

The Complainant received a competitive promotion under the Career Services provisions of DPM Chapter 8, to the Supervisory Position of Correctional Program Officer, DS-12, effective 10/01/95. The Complainant's position of Correctional Program Officer, DS-12 was abolished with the privatization of the Correctional Treatment Facility by Correctional Corporation of America on March 15, 1997. The Complainant

was offered a position in the D.C. Jail, in the official capacity of Correctional Program Officer, DS-12, wherein, he supervised an unit of Correctional Treatment specialists, who provide case management services to the inmate population.¹

On August 27, 2000, the Complainant forfeited many of his personnel-related appeal rights by accepting a position within the Managerial Supervisory Services, converting his DS-12 position to an MS-12. This was the Complainant's official position of record until his mandatory retirement on December 15, 2001, pursuant to provisions of 5 U.S.C. 8336. The Correctional Program Services position is supervisory and is coded XAA (non-bargaining unit) in Section 34 of his Official Personnel Action Form One.²

On November 27, 2001, the Complainant was given an Advance Notice of Proposed Suspension. He was charged with negligence and incompetence for failing to properly supervise Correctional Treatment Specialist Cynthia Hackett, who failed to provide adequate Case Management services to Joseph Heard. As a result Heard was illegally incarcerated from October 13, 1999³ to May 2001.

The Complainant did not receive a Final Agency decision to the Advance Notice due to his election to retire effective December 15, 2001, notwithstanding his eligibility to work until December 31, 2001.

¹ The position of Correctional Program Officer and Supervisory Correctional Treatment Specialist are both supervisory and classified at the DS-12 grade level. The D.C. Office of Personnel determined that the two positions were so similar in duties and responsibilities that they offered the Complainant the position of Correctional Program Officer at the D.C. Jail. However, the Complainant may have been inadvertently referred to as a Supervisory Correctional Treatment Specialist in the November 27, 2001 Advance Notice of Proposed Suspension.

² See Exhibit "A" attached and incorporated by reference.

³ The date he should have been released.

The Complainant filed an internal complaint of discrimination with Fred Staten, Jr., EEO Officer on November 28, 2001⁴ claiming that the position of Correctional Program Officer to which he was promoted on October 1, 1995 should have been in the Collective Bargaining Unit.⁵ Coincidentally, the internal complaint of discrimination was filed one day after the Advance Notice of Proposed Suspension was issued.

The Complainant also filed a formal complaint of discrimination with the D.C. Office of Human Rights and cross-filed to the United States Equal Employment Opportunity Commission on January 30, 2002. The formal complaint makes no reference to the Complainant's promotion to Correctional Program Officer which was the basis of his Internal Complaint of Discrimination.

ARGUMENT

A. As a Supervisor, within the Management Supervisory Services, the Complainant Lacks Standing to Bring an Unfair Labor Practice Complaint.

The Complainant's position of Correctional Program Officer was a supervisory position. The position was inadvertently advertised in Vacancy Announcement, FL (23) 95-112 as being in the FOP Bargaining Unit. However, the Announcement indicated that the position involved supervisory and managerial duties. The Complainant was advised of the error before he took the position. Thus, the Complainant knew that he was not a member of the FOP bargaining unit or any DOC bargaining unit. Additionally, if any

⁴ Nearly 5 ½ years after he was promoted to the position and over a year after his acceptance of the MSS promotion.

⁵ The Complainant was advised and acknowledged that there was an error in the Position Vacancy Announcement. But the Announcement indicates in the section entitled "Brief Description of Duties," the **supervisory** and **managerial** duties of the position.

confusion could have existed, it was surely eliminated by the Complainant's acceptance of a Management Supervisory Services (MSS) appointment in 2000.

Supervisors such as the Complainant are explicitly excluded from coverage under the Comprehensive Merit Personnel Act (CMPA) at D.C. Code⁶ 1-617.01(3)(d) that provides although each employee of the D.C. government has the right to join a labor organization, a supervisor or management official does not have the right. Additionally, D.C. Code 1-617.09(b)(1) provides, in pertinent part:

A unit shall not be established if it includes the following: (1) Any management official or supervisor...

Additionally, the MSS, which the Complainant is employed, expressly precludes bargaining unit employees. D.C. Code Section 1-609.52 states,

(b) Consistent with the provisions of subchapter XVII of this chapter, any individual occupying a position included in a recognized collective bargaining unit shall not be included in the Management Supervisory Service.

Even the Collective Bargaining Agreement (CBA) that was operative at the time of Complainant's promotion on October 1, 1995 provides in Article 1, RECOGNITION, "The employer recognizes the Union as the exclusive representative of all employees of the D.C. Department of Corrections excluding management employees, confidential employees, supervisors...."

While the Complainant alleged that his position as a Correctional Program Officer was not supervisory, he referred to himself as Chief Case Manager in certain correspondence.⁷ The CMPA excludes both supervisor and managers from its coverage. The Complainant having been a shop steward before his promotion on October 1, 1995 to

⁶ All references to the D.C. Official Code are to the 2001 Ed.

⁷ See Exhibit "B" attached and incorporated by reference. It is a Memorandum to the Director of the D.C. Department of Corrections dated May 5, 1998 from the Complainant.

Correctional Program Officer, DS-12, surely knows that even as a manager, as he called himself, he was excluded from the protection of the CMPA.

The Complainant incorrectly alleges that the PERB has jurisdiction over the Unfair Labor Complaint he filed. He does not allege a violation of D.C. Code 1-617.04⁸, but even if he had the PERB does not have jurisdiction because the Complainant's MSS supervisory position excludes him from the protections of the Labor Relations Subchapter of the Comprehensive Merit Personnel Act.

Since the Complainant was not a member of a bargaining unit he had no standing to allege an unfair labor practice (ULP) against the Agency. As such, the Agency respectfully requests the Board to dismiss the Complaint in its entirety, with prejudice.

B. The Complainant Lacks Standing to Raise a Contractual Claim or a Representational Claim Before the Board.

Although extremely difficult to decipher, the Complainant's claims may be loosely contractual or representational in nature. His claims involve determining whether the position to which he was promoted should have been classified as being within the bargaining unit. Of course the Complainant has no standing to assert the claim under the provisions of the CBA since, as a supervisor, he is not a member of the bargaining unit. In any case, the Complainant cannot properly file a contractual claim before the Board. Additionally, the Complainant clearly lacks standing under the PERB rules to file a clarification or modification petition.

D.C.Code Section 1-617.04(a)(5) provides, "[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative." The Complainant has no standing to assert this claim

⁸ The D.C. Code section which indicates the elements of an Unfair Labor Practice.

against the Agency because he is not a representative of the FOP. Therefore the Agency has no duty to bargain with him. Additionally the Complainant seems confused because he filed this ULP and made these allegations against the FOP, the exclusive representative of the bargaining unit.

D.C. Code 1-617.04(a)(5) protects and enforces employee rights and employer obligations by making their violation an unfair labor practice. However, in determining a violation of this obligation, the PERB has always made a distinction between obligation that are statutorily imposed under the CMPA and those obligations that are contractually agreed-upon between the parties. The CMPA provides for the resolution of the former, while the parties have contractually provided for the resolution of the latter, vis-à-vis, the grievance and arbitration process contained in their collective bargaining agreement.⁹ Therefore, the PERB has concluded, that it lacks jurisdiction over alleged violations that are strictly contractual in nature. American Federation of State, County, and Municipal Employees, Local 2921 v. District of Columbia Public Schools, 42 DCR 5685, Op. No. 339, PERB Case No. 92-U-08 (1992). *See also*, Washington Teachers' Union, Local 6, American Federation of Teachers, AFL-CIO v. District of Columbia Public Schools, 42 DCR 5488, Slip Op.No. 337, PERB Case No. 92-U-18 (1995).

Finally, to the extent the Complainant is seeking to clarify the certified unit description, an unfair labor practice is an improper tool. A PERB Rule 504 Modification or a Rule 506 Clarification may only be filed by an employing entity or by a labor organization. If the Complainant is seeking to review the existing certification, the Complainant is barred due to lack of standing.

⁹ A dispute currently exists as to whether the FOP and the Agency are parties to any collective bargaining agreement. That dispute is before the Board in several unrelated cases.

Even if his claims were true, the Complainant is simply barred from raising contractual or representational matters before the Board. As such, the Agency respectfully requests the Board to dismiss the Complaint in its entirety, with prejudice.

C. Even Assuming the Veracity of Complainant's Most Outlandish Accusations, the Complainant Has Failed to Allege Any Claim Upon Which Relief Can Be Granted.

The Board has found that an alleged discriminatory act by a District government agency with respect to an employee's term or condition of employment must be motivated by an intent to encourage or discourage membership in any labor organization in order to demonstrate a unfair labor practice based upon discrimination. Butler, et al. and The Department of Corrections, 49 DCR 1152 (February 8, 2002)Teamsters, Local Union 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. D.C. Public Schools, 43 DCR 5585, Slip Op. No. 375, **PERB** Case No. 93-U-11 (1994).

The Complainant's absurd allegations that he was the subject of collusion between the Agency and the Union to discriminate against him, do not fall within the elements of any unfair labor practice. Nor does the Complainant's allegations that the position of Correctional Program Officer was non-supervisory and lowered his "standing in the Agency's organizational structure" satisfy the elements of an unfair labor practice under the CMPA at D.C.Code 1-617.04. Even if they did the Complainant has no standing as a supervisor to assert them.

Since the Complainant retired early, he avoided the proposed suspension for negligence and incompetence, so he did not suffer any harm as he alleges. Nor is he

entitled to back pay since he was always paid from October 1, 1995 to his retirement as a Correctional Program Officer, MS-12.

Since the Complainant has failed to allege any claim upon which the Board may grant him relief and since the Complainant has not alleged any actual damages which the Board could remedy, the Agency respectfully requests the Board to dismiss this matter in its entirety, with prejudice.

CONCLUSION

The Complainant was promoted to the position of Correctional Program Officer DS-12 effective October 1, 1995, and later accepted a position within the newly created MSS as a MS-12 Correctional Program Officer. These positions were unquestioningly supervisory and were excluded from the bargaining unit by statute. The Complainant was aware of the supervisory nature of the position. None of the Complainant's allegations of an unfair labor practice satisfy the statutory elements of Section 1-617.04 of the CMPA, (D.C.Code Section 1-617.04). While the Complainant's alleged claims might have some contractual basis, he has no standing to have them resolved under the grievance and arbitration process contained in bargaining unit CBA, because, as a supervisor, he is excluded from membership in the bargaining unit.

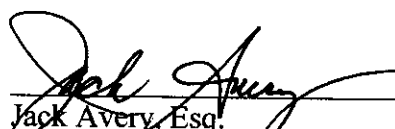
It appears that the internal complaint of discrimination and the filing of a formal complaint with the D.C.Office of Human Rights and the cross complaint with the U.S. Equal Employment Opportunity Office were all motivated by the Complainant receiving the Advance Notice of Proposed Suspension on November 27, 2001. He filed the internal complaint of discrimination one day afterwards on November 28,2001.

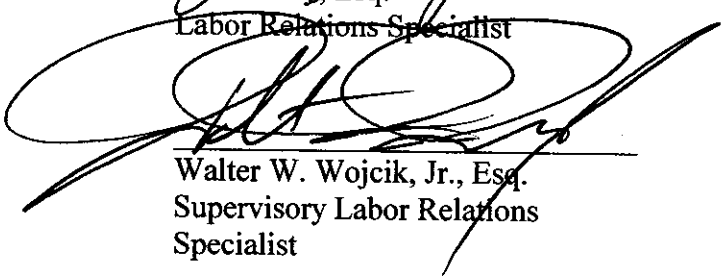
Therefore, based on the foregoing, the Agency respectfully requests that PERB dismiss the Unfair Labor Practice Complaint in its entirety, with prejudice.

Respectfully submitted this 22nd day of April, 2002,

For the Respondents:

District of Columbia Office of Labor
Relations and Collective Bargaining
441 4th Street, NW, Suite 200 S
Washington, D.C. 20001
Tel: (202) 4953
Fax (202) 6887



Jack Avery, Esq.
Labor Relations Specialist

Walter W. Wojcik, Jr., Esq.
Supervisory Labor Relations
Specialist

Mary E. Leary, Esq., Director

★ ★
OF THE
DISTRICT OF COLUMBIA

PERSONNEL ACTION

ACTION CODE		ORIGINATING AGENCY		CORRECTIONS	
SOCIAL SECURITY NUMBER	NAME	LAST	FIRST	MIDDLE	2A. 1 MR 4 MS 2 MRS. 3 MISS
578-58-7515	WHITE, CARL L				3. DATE/ACTION NO. 218639 10-25-95
DEPARTMENT	ADDRESS	STREET	DATE OF BIRTH	PHYSICAL HANDICAP	4. EFFECT DATE MO DY YR 10 CI 95
CORRECTIONS	2300 GOOD HOPE RD SE		09/08/43	04	
CITY	STATE	ZIP	9 VETERANS PREFERENCE	1 NONE 2 3 PT 3 10 PT DISAB 4 10 PT COMP	5. 10 PT OTHER 1
NASHINGTON	DC	20020			
10 NATURE OF ACTION/CODE	NOTE DATE	MO DY YR	SECTION 1-608.1 (a)(5) D.C. CODE (1981 ed) TITLE 8 UNRECORDED	EMPLOYMENT DATE MO DY YR 12 14 81	
7025 PRON (PROB) SUPVY					
12 SERVICE COMP DATE MO DY YR	13. O.C. SERVICE COMP. DATE MO DY YR	14 FEGLI REGULAR 1 COVERED 2 INELIGIBLE 3 WAIVED	15 FEGLI OPTIONAL 1 UNDER 35 2 35-39 3 40-44 4 45-49	5. 50-54 6 55-59 7. 60 AND UP	15 HEALTH BENEFITS CODE E31
12 14 81	12 14 81	3			CARRIER CONTROL NO.
16 FROM POSITION TITLE AND NUMBER	17 PAY SCHEDULE SERIES	18 GRADE	STEP	19 SALARY	20. ORGANIZATIONAL UNIT
CORRECTIONAL TREATMENT SPEC 0056448/N	DS D0101	11	J4	37816	COR TREATMENT FACILITY
220000006126 DTD. 11-22-94	21. PAY GROUP	22. GRADE	23. STEP	24. SALARY	25. TENURE IN SYSTEM
	01	1	02	40295	05-0101-11-1
CORR PROBATION OFFICER	26 PAY SCHEDULE SERIES	27 GRADE	28 STEP	29 SALARY	30. ORGANIZATIONAL UNIT
0054551/S	00000	1	02	40295	COR TREATMENT FACILITY
2200000035813 DTD. 01-26-95	31. PAY GROUP	32. GRADE	33. STEP	34. SALARY	35. TENURE IN SYSTEM
	01	1	02	40295	05-0006-12-04-5
28 LABOR DISTRIBUTION RULE IS CERTIFIED CORRECT	29 RETIREMENT	30 JUDGES (13.5%)	31 JUDGES (16.5%)	32 FICA NO TIAA/CREF	33 CS LAW ENFORCEMENT
AGENCY CONTROLLER OR DESIGNEE	01 CS RETIRE 02 402 TEACHERS 03 POLICE/FIRE 04 JUDGES (13%)	05 JUDGES (13.5%) 06 JUDGES (16.5%) 07 RESERVED 08 UDC (110%)	09 UDC (112.5%) 10 UDC (115%) 11 FICA 12 NONE	13 FICA NO TIAA/CREF 14 CS LAW ENFORCEMENT 15	04250
30 PAY GROUP	31 RETAINED GRADE	32 CORRESPONDING GRADE	33 SERVICE CODE	34	35. LEAVE CEILING
01			001	001	100
36 EMPLOYMENT TYPE	37 POSITION TYPE	38 TERMINATION CODE	39 CERTIFICATE TO EMPLOY NO		
1 FULL TIME 2 PART TIME 3 FULL TIME TEMP	1 CAREER 2 EDUCATIONAL 3 EXECUTIVE 4 ACCEPTED	1 RESIGN 2 RETIRE 3 TRANSFER 4 MILITARY	5 DECEASED 6 TERMINATED 7 VOLUNTARY SEPARATION 8 INVOLUNTARY SEPARATION	XX00000	
MULTIPLE RULES	RULE	FUND	AGENCY	YR RESP	CENTER
YES NO	1	3	0	1	0
Other					
SUBJECT TO SATISFACTORY MEDICAL EXAMINATION AND CHEST X RAY					
SUBJECT TO COMPLETION OF _____ YEAR _____ PERIOD STATUS _____ CC 2800					
REMARKS 23/53 PAY RATE FIXED TO INCLUDE WITHIN-GRADE INCREASE DUE ON THE SAME DATE. THIS ACTION TAKEN AS RESULT OF NOTICE OF VACANCY JFL(23)95-112 DTD 07-31-95, AND MERIT STAFFING REGISTER JFL(23)95-112 DTD 08-17-95. CONTINUATION OF YOUR ASSIGNMENT TO THIS SUPERVISORY POSITION IS SUBJECT TO THE SATISFACTORY COMPLETION OF A ONE-YEAR PROBATIONARY PERIOD BEGINNING 10-01-95. IN THE EVENT THAT THIS ASSIGNMENT IS NOT CONTINUED YOU ARE ENTITLED TO BE RETURNED TO A POSITION IN YOUR AGENCY AT NO LOWER GRADE THAN THE POSITION YOU WOULD HAVE ATTAINED HAD THIS ACTION NEVER BEEN EFFECTIVE. EMPLOYEE STATES THAT HE IS A DISTRICT RESIDENT AND HAS PROVIDED THE FOLLOWING DOCUMENTS IN SUPPORT OF THIS STATEMENT: 1) BELL ATLANTIC TELEPHONE STATEMENT; 2) D.C. DRIVER'S PERMIT; 3) FEDERAL INCOME TAX RETURN-1994; 4) LEASE AGREEMENT FROM SMITH REALTY CO. THE EMPLOYEE IS REQUIRED TO MAINTAIN BONA FIDE DISTRICT RESIDENCY FOR A PERIOD OF FIVE (5) CONSECUTIVE YEARS FROM 10-01-95 TO 10-01-00. FAILURE TO MAINTAIN BONA FIDE DISTRICT RESIDENCY FOR THE FIVE YEAR PERIOD WILL RESULT IN FORFEITURE OF EMPLOYMENT.					
44 DEPARTMENT HEAD OR DESIGNEE SIGNATURE				APPROVAL DATE	
MAY 1. MONTGOMERY AGT DIR OF PERSONNEL SPO-2				10-23-95	

EXHIBIT "A"

Government of the District of Columbia
DEPARTMENT OF CORRECTIONS
Detention Facility
1901 D Street, S.E.
Washington, D.C. 20003
202-673-8500

MEMORANDUM

TO: Margaret Moore,
Director, D.C. Department of Corrections

THROUGH: John H. Thomas,
Executive Deputy Director

Adrienne R. Poteat,
Director of Institutions

Mario L. Randle,
Acting Warden

Shirley Williams,
Acting Deputy Warden for Programs

FROM: Carl L. White 5/5/98
Carl L. White, Correctional Program Officer, DS 0006-12

DATE: May 5, 1998

SUBJECT: Requesting Review of Annual Performance

This writer received his yearly rating on Thursday, April 21, 1998. Pursuant to District Personnel Manual Chapter 14, the purpose of this memorandum is to determine whether this writer's supervisor, Acting Deputy Warden for Programs, Ms. Shirley Williams' judgment of an excellent rating was motivated alone by malice at the Central Detention Facility (CDF). The reason for the request is to determine whether or not his excellent rating would prejudice this writer on the retention list or possibly promotion.

EXHIBIT "B"

Manager raises the following issues:

1. Undisputed judgment raises the bar for an outstanding rating.
2. Compliance with work instructions gave rise to the level of outrageous conduct.
3. Orderliness in work place: employee is in the zone of danger.
4. Observance of rules, including safety is a breach of District Personnel Chapter 14.

1. Undisputed Judgment Raises the Bar For An Outstanding Rating

In an attempt to preclude this manager from a outstanding rating, Ms. Williams asserts that manager is unable to make clear, well defined break between union and management and could find himself in a challenged position. Ms. Williams characterizes her comments as undisputed when, in fact, the record clearly shows quite the opposite. Manager's Position Description, DS-0006-12-04-5, states the incumbent functions as an operational manager of an assigned housing unit, and is responsible for supervising and directing the activities of a multidisciplinary team of staff members who are assigned to work within the unit. (See attachment #1). However, according to the D.C. Office of Personnel, the job description for Supervisory Case Manager does not exist.

This writer's office is assigned to the second floor as Chief, Case Manager of Unit II, next to Chief, Case Manager of Unit I, Mr. Seth Vaughn. Both chiefs supervise nine case managers under their purview. Currently, two secretaries are assigned to the second floor, while the case manager's office space is located within the inmate housing unit. Ms. Williams' working space is also located on the second floor in the Case Management Unit, while other deputy wardens are assigned to the first floor.

On numerous occasions this writer's judgment has requested keys to his assigned work area in the Case Management Unit on the second floor, leading to the copier room, clerical area and the rest room without success for over a year through monthly reports. (See attachment #2).

CDF Policy 5021 - 1B, Key Control, dated July 3, 1997, disclosed during discovery, revealed specific responsibilities for the issue, distribution and control of all keys assigned within the CDF. (See attachment #3). This is one of the occurrences that the Acting Deputy Warden for Programs gives reference to in her comments "unable to make a clear well defined break between union and management". Manager is being prejudiced because he is a former shop steward, prior to current position with the American Federation of Government Employee (AFGE) and Teamsters. Ms. Williams'

actions of controlling both chief's key ring is not consistent with CDF's own written policy and requested keys have never materialized. A truly disputed question is how did non-supervisory employees obtain keys to certain doors that the chiefs don't possess. The Key Control Policy also says "The Institutional Training Coordinator shall be responsible for ensuring that all new employees are thoroughly familiar with the procedure outlined in reference to "Key Control"

Whether the Acting Deputy Warden's conduct can be extreme and outrageous depends on facts of this case. Numerous memorandums addressing various correctional settings have prejudice this employee in terms of judgment.

2. Compliance With Work Instructions Gave Rise To The Level Of Outragenous Conduct

Manager's second contention that facts are in dispute is the statement "at times in his dealings with inmates, he negates continued professionalism". This writer's Position Description again states "consults with institutional administration, security personnel and inmates as necessary in the resolution of emergency or extraordinary correctional problems". However, this manager has chaired the Inmate Grievance Advisory Committee (IGAC) on a monthly basis for over one year. Compliance Monitor, Gloria Thaxton stated that IGAC chairman has made an astronomical difference in keeping the CDF in compliance with the Women vs District of Columbia and Franklin vs District of Columbia during this rating period. Employee has worked above and beyond the call of duty for the entire inmate population. A truly disputed question is employee being prejudiced and why not delegate the other chief the responsibility. It is alleged that he received an outstanding rating with less responsibility and was transferred to CDF six months ago from Maximum Security. While this manager was assigned to CDF on March 17, 1997, from the retention list, due to reduction in force from the Correctional Treatment Facility (CTF).

In attentive record keeping of this employee's position description and policy deviation is abundant. Ms. Williams failed to make this writer aware of the performance requirements of the position he occupies; recognizing meritorious efforts requesting various support services to all IGAC meeting and drug treatment employees for the detail inmates. It is incomprehensible to this writer that such indifference and inattentiveness can be accepted in general. Government rules, regulations and CDF's own policy are promulgated to avoid the situation that occurred during this rating period. The record is clearly in dispute, how can Ms. Williams rate this manager when she was not aware of Position Description as noted on the P.O. Form 12 as Supervisory Case Manager.

That is why proper procedures are in place, because without procedures, the conduct of the Acting Deputy Warden would be extreme and outrageous! District Personnel Chapter 14 and CDF's own policies are mandated to prevent a situation in which there is a high degree of probability that severe outrageous conduct and emotional distress will follow and Ms. Williams goes ahead in conscious disregard of good faith. Manager was entitled to protection.

3. Orderliness in Work Place: Manager in the Zone of Danger

Ms. Williams' rating misses the point. Here, not knowing the job description, prejudice this entire rating period is sufficient, standing alone, for outrageous conduct. Here, we not only have lack of knowledge of Post Description, but how is his skills different to the other Chief Case Manager. We also have violations of facility policy in terms of key control and the District of Columbia Municipal Regulations Chapter 14. These regulations and internal procedures are designed to protect this employee, and those similarly situated from conduct that if not followed, can amount to extreme outrageous behavior.

Compliance Monitor, Gloria Thaxton, Violet Hicks, Warden's office and inmates participating with the IGAC testimony will link the casual connection of Ms. Williams' negligent statement about lack of professionalism with the inmates.

This manager contends that he was within the zone of danger required because his harm began with being a former shop steward. This manager further acknowledges that the Deputy Warden for Programs office created an inequitable situation in directing all case managers to work the "Lorton Desk" (See attachment #4). This assignment was normally assigned to Unit I and not assigning case managers from Unit II to work the intake process under the purview of Unit II. Building on the work of her predecessors, Patricia Temoney and Mario Randle, Ms. Williams prejudiced this rating purview when she wrote define break between union and management. Again, the CDF's own policy and District rules and regulations are in place to avoid the negligent conduct that occurred in this case. Based on the record, the manager is within the zone of danger.

4. Observance of Rules, Including Safety Is A Breach of District Personnel Chapter 14

Here, this manager is challenging the entire excellent rating without supporting documents, as a result, this writer suffered prejudice in terms of possible promotion and standing on the retention list. Therefore, Acting Deputy Warden for Programs under this scenario as well, Ms. Williams' oversight cannot be considered sound strategy, nor can it be considered reasonable professional representation under the prevailing professional norms.

Comments in the rating are clearly improper. They include, in rebuttal, the rater's personal opinion regarding this writer, and her attempt to shift the burden of proof to this manager on a material issue. This appeal preserves error review under the standard of substantial prejudices rather than the stringent plain error standard. No indication on the P.O. Form 12 for "Observance of rules, including Safety" by plus (+), check or minus (-) was left for review under the demanding plain error standard. Under no circumstance can this oversight be justified as sound strategy, or as a reasonable tactical decision. There is reasonable probability that absent the errors of the rater, the result of the rating period would have been an outstanding rating.

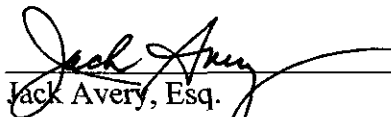
CERTIFICATE OF SERVICE

The undersigned certifies that on April 22, 2002 a true and correct copy of the foregoing **Agency's Motion to Dismiss** was served via first Class mail, postage prepaid upon the following:

Carl L. White
3432 'N' Street S.E.
Washington, DC 20019
(202) 584-8221

William Dupree,
Chairman
Fraternal Order of Police
DOC, 711 4th Street, N.W.
Washington, D.C. 20001
(202) 737 1892

Date: April 22, 2002



Jack Avery, Esq.
Labor Relations Specialist

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

CARL L. WHITE (RETIREE), COMPLAINANT

V.

**DISTRICT OF COLUMBIA DEPARTMENT OF
CORRECTIONS (AGENCY) AND THE
FRATERNAL ORDER OF POLICE (FOP),**

AGENCY / RESPONDENTS

PERB CASE # 02-U-15

MOTION FOR AMENDMENT TO COMPLAINT

Pursuant to Rule 501 of the PERB Rule, the purpose of this motion is to add the term retaliation to the complaint. In response to the discrimination complaint filed with Mr. Fred Staten, EEO OFFICER on November 28, 2001, complainant states:

1. It is admitted that complainant opposed working two Correctional Program Officer (CPO) positions alone between June 2001 and December 2001.
2. It is admitted that complainant claimed back pay in the discrimination complaint.
3. It is admitted that complainant opposed a Visiting List for an increased inmate population when the Program Statement did not address a list on November 19, 2001.
4. It is denied that the CPO position is the same as the Supervisory Correctional Treatment Specialist position (SCTS) at the D.C. Jail, and opposed that theory.
5. It is admitted that complainant suffer an adverse proposed suspension on November 29, 2001, because he opposed an employment practice.
6. The retaliatory conduct of the agency created the proposed suspension of 45 days and was related to duress regarding involuntary retirement two weeks prior to the mandatory retirement date of December 28, 2001.

7. As a result, retaliation will be lost to complainant altogether if claim is not allowed under Rule 501. Accordingly, for the reasons stated above, complainant respectfully requests that the motion be granted.

Respectfully submitted,

Carl L. White

Carl L. White,
Complainant
3432 'N' Street S.E.
Washington, D.C. 20019
202-584-8221

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing motion were mailed, postage prepaid, this 12th day of April, 2002, to the following:

- ☐ Mary Leary, Esquire
Director
Office of Labor Relations and
Collective Bargaining
441 4th Street N.W.
Suite 200 South
Washington, D.C. 20001
- ☐ William Dupree
Chairperson
400 5th Street N.W.
Suite 100
Washington, D.C. 20001
- ☐ Odie Washington
1923 Vermont Avenue N.W., 2nd Floor
Washington, D.C. 20001

Carl L. White

Carl L. White

4-12-02

Date

Exhibit 1H

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS
Central Detention Facility



November 27, 2001

Carl White
Supervisory Correctional Treatment Specialist
Central Detention Facility
1901 D Street S.E.
Washington, D.C. 20003

Dear Mr. White:

This is a fifteen- (15) day advance notice of a proposal to suspend you for forty-five days (45) from your position of Supervisory Correctional Treatment Specialist in the D.C. Department of Corrections. This action is proposed in accordance with the provisions of § 1608 of the District Personnel Manual (DPM). The proposed action is based on the charges of Negligence and Incompetence. The details in support of the proposed action are stated below.

SPECIFICATION: On August 10, 2001 Ms. Joyce Jones, Special Assistant to the Director notified my office that the Records Office had a delayed release. She further stated that Inmate Joseph Heard DCDC# 268-697 should have been released from custody October 13, 1999.

The Investigation revealed that Inmate Heard was held in custody since October 13, 1999, for the offense of Receiving Stolen Property, Case Number M41296. Through further investigation it was determined that this case was dismissed on June 4, 1996.

During Inmate Heard's incarceration he was housed in South Two. Ms. Cynthia Hackett was his primary Correctional Treatment Specialist, under your supervision. Ms. Hackett failed to provide adequate Case Management services to Joseph Heard from October 1999 to May 2001. If the basic Case Management services were provided to Heard, his illegal detention at the Central Detention Facility could have been avoided.

The Internal Affairs investigation substantiated that you were negligent in your duties as a supervisor. You failed to hold Ms. Hackett accountable for documenting Case Management services rendered to Inmate Joseph Heard. By your own admission you relied upon Correctional Treatment Specialist to maintain accurate information in logbooks and or contact sheets with discretionary monitoring for compliance.

Carl White

Page 2

It is crystal clear that you neglected your supervisory duties by neglecting to properly review Ms. Hackett's Case Management Service logbook and contact sheets as required. If Joseph Heard received basis Case Management services, his illegal detention would not have occurred.

You are in violation of Basic Regulations for All Employees 1.1. , Which states:

"Employees are required to have complete understanding of their position description and all regulations, rules, policies and procedures pertaining to the department and their Division, Service and Unit, and to comply therewith". Employees are held responsible for the understanding and compliance with all documents posted on official bulletin boards."

Mr. White, your failure to perform your supervisory duties constitutes negligence in this matter. As a result of your negligence Inmate Joseph Heard was illegally detained.

As you are aware the illegal incarceration of Inmate Joseph Heard has brought national notoriety and has caused immeasurable embarrassment to the Department of Corrections and the Government of the District of Columbia. Therefore, in view of the seriousness of this matter and in the best interest and mission of the D.C. Department of Corrections, it is proposed that you be suspended for 45 days from your position of Supervisory Correctional Treatment Specialist.

You have the right to review any material upon which the proposed action is based, and to prepare a written response to the notice, including affidavits and other documentation within 6 days of receipt of the notice. You are entitled to an administrative review by a hearing officer. You are further informed of your right to have an attorney or other representative assist you in the preparation of your response.

With prior supervisory approval, you are entitled to a reasonable amount of official time, not to exceed 10 hours of administrative leave, to review the material upon which the proposed action is based, and to prepare your response.

Your response should you prepare one, may raise every defense, fact or supporting matter in extenuation, exculpation, or mitigation of which you have knowledge or reasonably should have knowledge, or which is relevant to the reasons in support of the proposed action, specification(s), or proposed penalty.

Carl White

Page 3

Irma Brady has been appointed hearing officer to conduct the administrative review of the proposed action. Accordingly, any response you prepare must be presented to:

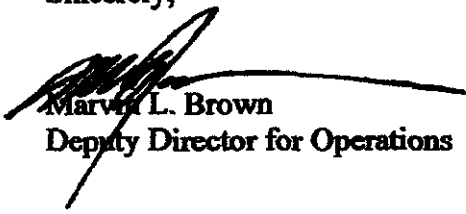
Irma Brady, Hearing Officer
D.C. Department of Corrections
1355-57 New York Ave. NE
Washington, D.C. 20002
Telephone (202) 576-6239

In conducting the administrative review, Ms. Brady will review this written notice and your response, if there is one. After conducting the administrative review, Ms. Brady will make a written report and recommendation to Odie Washington, Deciding Official, who will issue a final decision.

The material upon which the proposed action is based may be reviewed in the Office of Human Resource Management, located at 1923 Vermont Avenue NW, Washington, DC 20001. You may arrange to review the material by contacting Toni Shell, Staff Assistant at 671-2110.

Please be advised that you will remain in an active duty status during the period of advance notice.

Sincerely,



Marvin L. Brown
Deputy Director for Operations

ACKNOWLEDGEMENT OF RECEIPT
(ADVANCE NOTICE DATED 11/27/01)

EMPLOYEE: Carl White
Supervisory Correctional Treatment Specialist



Employee Signature

11-29-01

Date



Witnessed By

11-29-01

Date



Delivered By

11/29/01

Date

SUPERVISORY CORRECTIONAL TREATMENT SPECIALIST

DS-101-12

INTRODUCTION

Serves as Chief, Inmate Classification and Parole in the Department of Corrections, charged with the direction of the casework services of subordinate classification and parole officers in their treatment of inmates.

POSITION CONTROL

Works under the general supervision of the Administrator or designee, who assigns blocks of cases on a long range recurring basis. Incumbent assumes direct responsibility for the assignment of cases and the provision of casework and classification services by subordinate Correctional Treatment Specialist. Work is reviewed through periodic conferences and written statistical and narrative reports.

The work of this position requires a knowledge of the methods, techniques, principles and concepts of inmate classification and rehabilitation; and demonstrated ability in casework management, group supervision, public relations, and the application of correctional theories and practices, and classification theories, policies and procedures.

Guidelines include publications of the Department; rules and regulations as issued by Federal and State social and penal agencies; publications in the fields of sociology, psychology, social work, penology and criminology; records and reports made available by the various divisions and services of the Department; and principles and methods of correctional programming and management. The incumbent will be required to exhibit a high degree of professional competency and expertise in the interpretation of guidelines in the development of a planned program of institutional activity tempered to meet the varied demands and individual needs and abilities of inmates confined to the Facility.

MAJOR DUTIES AND RESPONSIBILITIES

Supervises three (3) or more Correctional Treatment Specialists, plans and assigns caseloads of inmates to subordinates on a continuing basis, selecting the more difficult cases for service by higher-graded specialists.

Reviews subordinates' work for conformance with acceptance guidelines, policies and practices. Evaluates the work of subordinates in light of their contributions to the overall mission of the unit. Accepts or rejects work based on such considerations and provides basic and advanced instructions, guidance and counseling designed to improve the work, either quantitatively or

-2-

qualitatively.

Personally assists Correctional Treatment Specialists in resolving difficult case management problems.

Consults with supervisor on problems involving the need for training for subordinates, as well as professional counseling and development. Provides supervisor with information on unit problems which may serve as a basis for research or other efforts to resolve such problems.

Participates in the establishment of case management standards and upon request, conducts or participates in classes, seminars, etc., involving professional development, social work standards, and current methods and practices in correctional social work.

Ensures the accurate and expeditious computation of sentences for all inmates confined to the Facility. Oversees the maintenance of an extensive number of inmates dossiers and a wide variety of inmate records.

Executes personnel functions such as resolving minor employee grievances, referring more difficult complaints to higher authority for resolution; prepares and maintains a variety of records and reports for budgetary, personnel and internal management purposes; and conducts regular staff meetings with subordinates to disseminate information as to new policies and procedures Departmentally and at the Facility.

Performs other related duties as assigned.

Competitive Area: Department of Corrections

Competitive Level: DS-0006-12-04-S

Title: CORRECTIONAL PROG OFCR

Position Type: I, P

Name (Last, First, MI)	Title	SCD	Additional Svcs Credits Received						NIP SCD	Comp Credit	Effective Date	Ablends	Final Placement
			Gen Perf	Val Perf	As Perf	As Perf	As Perf	As Perf					
HARRISON, ORLANDER B	CORRECTIONAL PROG OFCR	08/21/1968	4	4	4	3			08/21/1957	0302			
PURVIS, GLENNE E	CORRECTIONAL PROG OFCR	06/24/1968	0	4	0				06/24/1964	0306			
JONES, DONALD	CORRECTIONAL PROG OFCR	12/27/1971	0	4	3				12/27/1964	0305			
LAWRENCE, DAVIDA M	CORRECTIONAL PROG OFCR	01/20/1973	0	4	3				01/20/1966	0305			
DUMAS, JOSEPHINE M	CORRECTIONAL PROG OFCR	12/08/1970	0	0	3				12/08/1967	0302			
GADIKIAN, GARABED F	CORRECTIONAL PROG OFCR	04/03/1975	0	4	3				04/03/1968	0302			
CROMARTIE, ADLOISE	CORRECTIONAL PROG OFCR	07/21/1976	4	0	3				07/21/1969	0305			
CARTER, WANDA L	CORRECTIONAL PROG OFCR	11/26/1972	0	0	3				11/26/1969	0204	Retired 1/02		
WHITE, CARL L	CORRECTIONAL PROG OFCR	08/11/1980	4	0	3				08/11/1973	0202	Retired 12/15/01		
MCNEIL, VALERIE S	CORRECTIONAL PROG OFCR	09/03/1977	4	0	0				09/03/1973	0302			
RILEY, PHILIPPIA E	CORRECTIONAL PROG OFCR	04/01/1977	0	0	3				04/01/1974	0303	Separated in June 2001		
BRADY, IRMA L	CORRECTIONAL PROG OFCR	08/07/1981	4	0	3				08/07/1974	0303			
BERRY, JOIN H	CORRECTIONAL PROG OFCR	05/08/1978	0	0	3				05/08/1975	0303			
BENNETT, LEONA	CORRECTIONAL PROG OFCR	08/13/1979	4	0	3				08/13/1972	0303	Petitioner's Last supervisor		

RETENTION REGISTER

DATE: 04/19/99 PAGE: 26

COMPETITIVE ARREST PL

COMPETITIVE CREDIT DB-000612-048

TITLE: CORRECTIONAL PROG OFCR

POSITION TYPE: 1, F

EMP LAST, FIRST, MI	TITLE	SCD	ADDITIONAL BRCC CREDIT RECEIVED	RTF	RES-811-L	EFFECT DATE	FINAL PLCHT
			PERF	STEF	TRF		PP-8ERS-GR-CL
1 HARRISON, ORLANDER B	CORRECTIONAL PROG OFCR	690821	04	04	03	570821	0304
1 LAWRENCE, DOROTHY M	CORRECTIONAL PROG OFCR	730130	04	04	03	620130	0308
A 1 PURVIS, SLENN E	CORRECTIONAL PROG OFCR	580624	00	04	03	640624	0306
1 DURHAM, JOSEPHINE W	CORRECTIONAL PROG OFCR	707108	00	00	03	571208	0302
1 SADIKIAN, GAROBEED F	CORRECTIONAL PROG OFCR	750403	00	04	03	600403	0302
1 LAWHART, MICHAEL	CORRECTIONAL PROG OFCR	730712	04	03	03	600712	0303
1 CARTER, MANDA L	CORRECTIONAL PROG OFCR	721126	00	00	03	691126	0304
1 BERRY, JUDITH W	CORRECTIONAL PROG OFCR	780508	04	00	03	710508	0303
1 WHITE, CARL L	CORRECTIONAL PROG OFCR	800820	04	00	03	770820	0202
1 RICE, PHILIPPIA E	CORRECTIONAL PROG OFCR	770921	00	00	03	740921	0302
1 BRADY, JINNA L	CORRECTIONAL PROG OFCR	810807	04	00	03	740807	0202
1 MCNEIL, VINCENTE B	CORRECTIONAL PROG OFCR	770429	00	00	03	770429	0302
1 KELLEY, JOANNA L	CORRECTIONAL PROG OFCR	890103	04	00	00	850103	0407

990508 DB-0006-12-048

990508 Separate

DATE: 04/19/99 PAGE: 39

RETENTION REGISTER

COMPETITIVE TREAT FL

COMPETITIVE LEVEL: DB-0101-12-02-B

TITLE: SUPVY CORR TREAT SPEC

POSITION TYPE	1, F	SCD	ADDITIONAL SVC	RECEIVED	REF	REB-	FINAL
TEN: NAME			CREDIT	VEY	RES	LTV	PLCMT
GRP: LAST, FIRST, MI			DET	PREF	PREF	CMTR	DATE
1: VAUGHN, BETH H	701219	00	00	00	00	0202	DB-0101-12-02B
1: LEE, J. R. J. R. J. R.	710528	00	00	00	00	0404	990508
1: TENDREY SALMON, PATRICIA A	770813	00	00	00	00	0307	990308
1: BORO, BRENDA G	870801	04	00	00	00	0303	Separate

November 28, 2001

Fred Staten, Sr. EEO Officer
1923 Vermont Avenue, Northwest, Suite NL L-10
Washington, D.C. 20001

Enclosed is a summary of what I believe is discrimination by the Department of Corrections (Agency). I wish to claim back pay, but due to the inability to state where I would be on the past seniority list, due to Management Supervisory Service (MSS) in August 2000 and discriminatory practices of the above Agency, I am requesting that I be awarded back pay in line with my employment date of December 14, 1981. 701 (d) and (e) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 e (d) and (e), indicates that the position announcement FL (23 95-112 attached in this case states that the Fraternal Order of Police (FOP) represented me at the time of my promotion on October 5, 1995.

That I also applied for FL (23) 95-100 that was designated for the Central Detention Facility and not in the Collective Bargaining Unit.

My work numbers are (202) 673-8500 and (202) 673-8431. My home telephone number is (202) 584-8221.

Thank you for your assistance regarding this matter.

Very truly yours,
Carl L. White
Carl L. White, Correction
Program Officer

Statement of Issues Presented for Review

1. Whether the acquiesced behavior of the Fraternal Order of Police (FOP) in terms of being very quiet was such that FOP was negligent in its failure to continue representing announcement FL (23) 95-112-Correctional Program Officer (CPO) in the bargaining unit?
2. Whether the Department of Corrections (Agency) acting under the color of law willfully deprive me from FL (23) 95-100-Supervisory Correctional Treatment Specialist (SCTS) when I had the requisite skill, experience, education and other job related requirements. Such negligence was the proximate cause of continuing discrimination as a CPO.
3. Whether FL (23) 95-112 is validated by the Agency in protecting Constitutional Rights versus other job related CPO employees?
4. Whether the changing of job series to SCTS for Shirley Williams and Seth Vaughn in 1998 is a furtherance of a conspiracy?
5. Whether there is conscious participation of the Agency for the purpose of effecting the object of the original conspiracy?

Statement of the Case

The FOB was very quiet and complied tacitly with the agency regarding promotion in 1995. On July 31, 1995, The Agency announced FL (23) 95-112 for the position Correction Program Officer, DS-006-12. This position was announced in the bargaining unit with two vacancies. A college degree was not required in supervising correctional multi unit staff members including the correctional treatment specialist (CTS). A college degree is required for the CTS position.

In the same year, the Agency announced FL (23) 95-100 for position Supervisory Correctional Treatment Specialist, DS 101-12. This position was advertised as not being in the bargaining unit and a college degree was required. You supervise case work services of subordinate classification and parole officers. My previous position was a CTS at the Correctional Treatment Facility (CTF) in the Diagnostic Unit. I was promoted to the FL (23) 95-112 position on October 5, 1995.

As shown later, (1) FOP had an obligation to represent all position announced in the bargaining unit prior to my promotion, (2) FOP, in furtherance of the obligation, continued to correspond to me after the

promotion but failed to examine any misprint, (3) I lost my career service protection due to Manager Supervisory Service (MSS), and (4) I did not know the Correctional Program Officer position was not designed for the Central Detention Facility (CDF). The discrimination complained of was "continuing" in nature.

More recently, I was deprived of proper consideration for three open positions at CDF:

- a) Correctional Institution Administrator, DS-006-13 FL (22) 98-21
- b) Correctional Institutional Administrator FL (25) 00-22 DS-006-13
- c) Correctional Institutional Administrator DS-006-12 FL 25-00-21

By way of background, I have a Bachelor of Arts degree, with a major in History and Education, and a Master of Arts degree with a major in Administration and Supervision. Since 1982 I have worked in an union capacity until 1995 as a shop steward.

The only other CTS promoted from the Diagnostic Unit by the Agency was Brenda Ward. She was promoted to the FL (23) 95-100 Supervisory Correction Treatment Specialist, DS 101-12. After her promotion, Ms. Ward was transferred to the Occoquan Facility, now closed.

I was better qualified than Ms. Ward due to my graduate degree and time in service. See, attachment

She is no longer with the Agency due to reduction in force (RIF) in 1999. See, attachment.

After receiving my promotion, my pay stub revealed that my current position was not in the bargaining unit. CTF was sold in 1996, to a contractor, Community Corrections of America (CCA). When I questioned the former Warden, Adrienne R. Poteat about my position status, she advised by saying it was a misprint on the job announcement.

There appears to be a pattern surrounding misprints on job announcements because on July 13, 1994, Ms. Poteat informed Martin, Bodley and Kraft, P.C. about a misprint surrounding Substance Abuse Assistant announcement in May 1991. See, attachment

Mr. John Starks from the Substance Program at CTF was promoted to the same position as Ms. Ward (SCTS). The same position I applied for but not selected. After his selection, he was transferred to CDF and he did not have the prior case management skills as me. However, we both applied for residency preference which made him highly qualified. See, attachment. He was later demoted in 1996 back to a DS 11-CTS. Mr. Starks later resigned from this Agency. On January 28, 1997, I received my RIF notice, effective March 15, 1997.

The Agency failed to construct an accurate register of individuals who

would be retained on the employment rolls. I appealed the Agency's decision to separate from service in the Office of Employee Appeals (OEA) matter no. 2401-0202-97, dated February 12, 1997. In March 1997, I was retained again on the employment rolls without a break in service. Ms. Mary Montgomery, formerly of the D.C. Office of Personnel (DOP) notified my residence by telephone and advised to continue my tenure with the CDF staff on or about March 17, 1997.

Ms. Montgomery discovered the business necessity rule. This Agency was hiring numerous supervisors into a pool. The pool consisted of Correction Program Officer, Correctional Program Specialist, DS 006-12, and Supervisory Correctional Treatment Specialist designated for two employees only at CDF.

To this date, I have never received a signed document that states, I am pleased to notify you that your service will continue in the position of Correctional Program Officer.

Duty and Procedures of FOP to Protect Bargain Unit Members

Sometime in 1993, FOP contracted with the District of Columbia to represent all union members working for the Agency. See, attachment

Carlton Butler, Acting Staff Assistant stated that he had first hand knowledge that my position was announced as being in the Collective

Bargaining Unit dated August 16, 2000. See, attachment.

This evidence reflected FOP's failure to rectify a duty under the Policy to maintain a continuous investigation surrounding FL (23) 95-112. Negligence is defined as the breach of duty of care owed by FOP to me. At the onset it appears my position was not designed for CDF upon my arrival but for Supervisory Correctional Treatment Specialist (SCTS).

I worked under the purview of Patricia Temoney-Salmon, SCTS. The Agency had Ms. Salmon acting in a Correctional Institution Administrator (CIA) DS-006-13 position known as deputy warden for programs. The SCTS description reads that she worked under the general supervision of the warden. See, attachment

My description reads that I work under the purview of the deputy warden. See, attachment

Validity

In view of the foregoing, I am contesting the validity of my current position compared to the CIA and the SCTS at the CDF under Title 42 U.S.C. 2000 e-2 as being discriminatory. That FL (23) 95-112 was promulgated to prevent promotion to SCTS, FL (23) 95-100 and promotion to the CIA position. There can be no serious question that the Agency's line of progression

was not job related prior to MSS. First, I contend that I have been effectively and continuously deprived of appropriate job series change to a SCTS like retirees, Shirley Williams and Seth Vaughn in 1998, at CDF.

In Ms. Williams' case, she was serving two lines of progression, one for SCTS and one as a psychologist. My line of progression has never allowed me to act as a deputy warden officially at the CDF. When Ms. Salmon departed CDF in August 1997, she was temporary replaced by Mario Randle from Operations and he was an CIA, DS 006-13 and never a SCTS. In September 1997, Mr. Randle replaced then acting warden, Patricia Britton Jackson and he became the acting warden. He assigned his friend, Shirley Williams, the former supervisory psychologist, DS-180-13, as deputy warden for programs. The psychologist's brief description of duties indicated that she planned, developed and directed all professional assignments in the psychologist unit. The qualifications required the doctoral degree (Ph.D. or equivalent) related to full professional work in clinical psychology. See, attachment

Ms. Williams' selection interfered with my equal opportunity for development. Then, the most important step was to validate the chosen procedures, that is, to test their results with actual performance.

In the fall of 1997, the Agency transferred former CPO, Seth Vaughn to CDF from the now closed Maximum Security. Now, you had two CPOs

working under the purview of a supervisory psychologist. My argument is entitlement to SCTS through property and Constitutional rights. I argue that given my present duties as an inhouse chief case manager created validation, and that entitlement was violated by the Agency's misclassification and continued Classification as a COP at the CDF.

As noted above, the Agency and D.C. Personnel said nothing about a CPO at the CDF. I content that the Agency is practicing a false representation in reference to a material fact, with knowledge of its falsity and with the intent to deceive, and my current situation is in reliance on that representation.

The false misrepresentation continued on December 8, 1997, when the Agency announced the position CIA, DS 006-13, Announcement No. FL (22) 98-21.

It appears that the test had been validated for the SCTS and not for my position. This practice adversely affected my opportunity for promotion to the above mentioned position and can be considered as a violation of 29 CFR,1607.3 which reads as follows:

The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII constitutes discrimination unless: (a) the test has been validated and evidence a high degree of utility as hereafter described, and (b), the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

In this case, the courts advised that institutional wardens and directors will identify each designed position which they feel requires selective certification and will request that certain announcements be so in writing to the D.C. Personnel Office for their review and evaluation. Selective Certification was not required for CPO, FL (23) 95-112, my position and I was transferred to CDF which adversely affected development for promotion and losing my career service protection. The Agency validated, Ms. Williams by changing her series to a SCTS, DS 101-13. She was the only employee in this progression line. Also, she was still supervising one psychologist, Kathleen Shaw, DS 180-12.

At the completion of the 1997 and 1998 rating period, the Agency was selecting candidates from the December 8, 1997 announcement FL (22) 98-21. I was qualified and never selected and the position indicated several positions opened. See, attachment

Since I was being supervised by Williams, she was not aware of my position description nor case management. However, she rated me as a Supervisory Case Manager from September 1997 to March 31, 1998 as being excellent. The efficiency ratings measured my performance in a lower level job rather than the above mentioned position announcement that was being administered. See, attachment

Efficiency Ratings

Efficiency ratings consist of a supervisory evaluation of five factors: quality and quantity of work, dependability, personal relationships, and attendance. Each applicant for the CIA positions were rated on their job performance. The ratings took into consideration the elements of work behavior and job success. This writer's ratings for that period was performed by two different supervisors namely: Patricia T. Salmons exist ratings and Shirley Williams. I appealed the excellent rating issued by Ms. Williams and it was changed to outstanding due to lack of documentation to support the excellent rating. In my appeal dated May 5, 1998, I asked this Agency if the excellent rating was based on malice. See, attachment.

On May 26, 1998, in Ms. Williams justification, she stated in the last paragraph that there are subtle overtones of resentment to female authority which has been displayed in stances of supervisory meetings.

It appears that female authority in this case worked a disproportionate effect upon the chances of me obtaining a promotion and a job series change. This discrimination was purposeful and I asked if the Constitution of the United States had been violated.

I was stereotyped in terms of characterization of women, is female

authority job related as a CIA known as deputy warden. Also, that this male CPO would not meet the qualification for promotion, losing career service protection if my position is in the bargaining unit, responsible for three positions from September 2000 until February 2001, under MSS and suffer a disproportionate impact.

Recent Discrimination

My future prospects were deleteriously effected by past discrimination when the Agency changed the job series of retired Seth Vaughn, from a CPO to SCTS in 1998 while he was at CDF. His new job series entitled him to training and travel while I maintained my current position and received no training in 1999. See, attachment

In the fall of 1999, Ms. Salmon was the subject of an EEO complaint and findings of discrimination by the court against Mr. Rodney Bright in a case that I testified on his behalf. He was formerly assigned to CDF under my purview. The former warden, Patricia Britton Jackson testified on behalf of Ms. Salmon. In early January 2000, an employee in a lesser grade, Diane Desricott-Robinson, CTS, DS 101-11 was assigned acting deputy warden over two male CPOs now retired Daouda Lawrence and me. She had no substantive experience in the supervisory progression line. Ms. Robinson was remanded

back to the Agency from the 1999 RIF and assigned by Ms. Jackson. When I was transferred to CDF in 1997 Ms. Robinson served under my purview and she was transferred to the halfway house that summer.

The Agency in March 2000, announced two vacancies for CIA positions namely: FL (25) 00-22 and FL 25-00-21 one week apart. It was verbally reported that both positions were canceled. I was qualified for both positions. I applied for both positions.

MSS

In August 2000, MSS takes place and other CPO, Mr. Lawrence retires. Mr. Lawrence was transferred to CDF in January 2000 after the closing of the Youth Center. Ms. Robinson in September 2000 incurred an injury and goes out on compensation. The CDF is not under any court order regarding staffing. Mr. Lawrence's position remained vacant and I worked two CPO positions for six months serving 1,674 inmates. Prior to MSS, the Agency had ample enough managers and now under MSS not enough non-uniform supervisors. The only non-uniform supervisors under MSS regarding case management are CPOs serving under the pleasure of the Mayor. After September 2000 I assumed the responsibility of wearing three hats including the deputy warden position without documentation until February 2001.

During the month of February 2001, Ms. Leona Bennett formerly a SCTS, now a CIA, DS-006-13 reports to CDF. Ms. Phillippia Riley, CPO, DS-006-12 also arrived after the closing of the Maximum Security. However, Ms. Riley was terminated under MSS as the other CPO in June 2001. I am now back to wearing two hats again until my retirement on December 28, 2001 and the inmate population has increased beyond 1,674 inmates.

I wish to claim back pay for my pain and suffering. I also feel that I have been the victim of a continuing pattern of generalized, systemic discrimination spanning at least 18 years, involving both disparate treatment and impact, and based on past union activities with the execution of my official duties.

Constitutional Right to Promotion

I have constitutionally protected property rights to promotion or back pay. I contend that because of the nature and duties at CDF, I was in fact entitled to the deputy warden position like the SCTS. My duties include directing all casework as it pertains to the housing units. Provide overall direction of transferring inmates outside the confines of CDF. Oversee the intake process and the Adjustment Board. Conducting an audit on all sentenced felon inmates eligible for transfer to federal and contract facilities

across the United States. I was recently advised by my supervisor, Ms. Bennett that we are now responsible for a Visiting List for an increased inmate population when the Program Statement signed by Director Odie Washington does not address Visiting at CDF-on November 19, 2001.

I only have property interest as a municipal employee receiving coverage under the Federal Civil Service Retirement System ("CSRS").

If the CDF was designated for two SCTS then the two employees meeting that criteria at the inception of MSS in August 2000 were Adolph Cobb, now retired and Patricia Temoney-Salmon protected from MSS. See, attachment

Basis for Allegation of Discrimination

The preponderance of CIAs for programs at CDF since my arrival in 1997 are held by women. On August 10, 1997, Mr. Mario Randle replaced Ms. Salmon as a full pledge CIA on paper but he designated that responsibility to Shirley Williams. Statistical data which reflects gender at CDF will show an extremely out-of-balance pattern.

During the years I have worked at CDF, I have heard many comments and received numerous other cues from managers, both direct and indirect, which reflected skepticism or out-right prejudice concerning the work to which

was assigned. Even one case manager advised that I was given three months to last at CDF. He further advised that Mr. John Starks and Barbara Copeland promoted to SCTS in 1995 were both demoted back to CTS in 1996 during their probationary period. Mr. Starks was transferred to the Occoquan Facility and Ms. Copeland still remains at CDF under my purview.

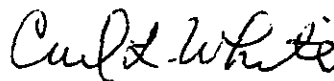
My Letter of Informal Complaint

I am requesting that I be furnished a comparative evaluation of my qualifications and those of the referred and selected candidates against the established requirements for the three positions mentioned earlier for which I was qualified and eligible during the period from December 1997 to the present. This information was not furnished to me.

I submit that I was available, eligible, and qualified for selection for the foregoing positions; that I was, at the time of selection, just as qualified for the assignments like Shirley Williams, Donald Jones, Steven Smith, and Leona Bennett, my current supervisor. I would have been selected for either of the vacancies. Officials of the D.C. Personnel who administer the Agency's Career

Program have an obligation for assuring that the principle of merit is not violated, either by error or design, in placement and promotion processes.

Therefore, I am asking for a complete investigation of the circumstances in my case.

A handwritten signature in cursive script, reading "Carl L. White".

Carl L. White

Attachment(s)

cc: Internal Affairs
Pamela Chisholm
Judiciary Committee
City Council Chairperson
Kathy Patterson

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD (PERB)**

CARL L. WHITE (RETIREE),
COMPLAINANT

V.

DISTRICT OF COLUMBIA DEPARTMENT OF
CORRECTIONS (AGENCY) AND THE
FRATERNAL ORDER OF POLICE (FOP),

AGENCY / RESPONDENTS

02-0-15

RECEIVED
DISTRICT OF COLUMBIA
PERB
JAN 27 11 31 AM '02
02-0-15

COMPLAINT OF UNFAIR LABOR PRACTICES

Jurisdiction

1. The Board has jurisdiction over this matter pursuant to D.C., Code, Section 618-2 (b)(2). This complaint is filed pursuant to part 520 of the PERB Rule

Parties

2. Between June 2001 and December 2001, Complainant was a DS-12 employee who had served the Agency for 20 years, with the last 4 years working at the Central Detention Facility (CDF). Complainant had an excellent record with the Agency. On November 29, 2001, Complainant, then a Correctional Program Officer (CPO), received notice of a proposed suspension of forty-five (45) days. The proposed suspension letter identified the Complainant as a Supervisory Correctional Treatment Specialist (SCTS), which was never his job title. The Complainant was charged with negligence and incompetence. This action was proposed because it was believed that he had failed to supervise Ms. Cynthia Hackett, Correctional Treatment Specialist, (CTS) DS-11 from October 13, 1999 to May 2001. The allegations surrounded inmate Joseph Heard's case, in which he spent two years incarcerated beyond his release time. Corrections' Director, Odie Washington, advised the Complainant on October 28, 2001, of his sixty (60) days advance notice of his upcoming mandatory retirement.

3. The address of the labor organization is: C/O William Dupree, Chairman, D.C.1, 711 4TH Street, Northwest, Washington, D. C. 20001. The telephone number is (202) 737-1892. The Agency / Respondents, are entities of the District of Columbia Government. They are the employers of the employees in the bargaining unit represented by FOP. The address of the Respondent is C/O Odie Washington, Director, 1923 Vermont Avenue, Northwest, 2nd floor, Washington, D.C. 20001. The telephone numbers are (202) 673-7316 and 673-2128.

Facts

4. At all times material herein, Mr. Fred Staten, EEO Officer, was the designated point of contact and representative of the Respondent when the Complainant filed his discrimination complaint on November 28, 2001.
5. At all times material herein, Mr. William Dupree was the Chairman of FOP and the point of contact for matters discussed herein below.
6. The Agency and the union under the term collusion adopted a new seniority system with the intention of discriminating against this former employee. This was a violation of Title V11, 42 U.S.C. 2000 e et sep; the limitation period set forth in 706 (e), 2000 e-5 (e), begins to run immediately upon the adoption of that system.
7. The CPO position was announced in the FOP bargaining unit in July 1995. The announcement number was FL (23) 95-112. (See attachment.) The uncontested fact here is that in October 1995, Complainant was reassigned from his DS-11 position as a CTS, to a DS 006-12 CPO position. In his CTS position, he was responsible for a caseload of inmates. The CTS position was in the professional series in the bargaining unit. The CPO position at CDF was non-supervisory and its duties lacked independent authority.
8. It entailed such tasks as checking on the work of clerical, summarizing the reports of the CTS and the fact that the position carried a DS-12 grade and salary in Complainant's case does not make it otherwise.
9. It is plain that Complainant's relative standing in the Agency's organizational structure went down drastically when he assumed the position to which he was transferred in 1995. This was a reduction in rank and an adverse action against Complainant according to law.
10. In fact, this case is similar to 5 U.S.C. 7512 (b)(1970), Federal Personnel Manual (FPM) Supp. 752.-1, Subch. S5-4a (1966), 5 C.F.R. 752.202(d) (1971). Complainant was denied these safeguards to his rank.
11. Under this continuing violation theory, each time a discriminatory seniority system was applied, such as not receiving a union pay scale, an independent unlawful employment practice under 703 (a) (1) took place.
12. Respondents conspired to change the seniority rules, in order to protect the civil service status and the union pay scale of various positions similar to the Complainant.

13. Complainant believes that he was discriminated against on the basis of his sex (MALE). The 45 days suspension would have commenced on December 17,2001. However, I involuntarily retired on December 15,2001, two (2) weeks earlier than my mandatory retirement on December 28,2001.
14. The involuntary retirement was the result of calculated pressure of 45 days amounting to duress. He requested two hearings up until December 12,2001, and was denied each time in terms of due process, a violation of the Fourteenth Amendment of the Constitution. The proposed suspension represented an unjustifiable coercive action taken together with the fact that he was a family man with a wife produced his retirement. Finally, unable to predict how long an appeal of his suspension would take cause a hardship to the Complainant.

Unfair Labor Practices

15. By the above described actions, the Agency / Respondents concealed their secret agreement in violation of D.C. Code Sec. 1-618.4 (a) (1) and (5).
16. By the actions stated above, both parties have engaged in and continued to engage in the unfair labor practice of a refusal to bargain in good faith prior to instituting a change in conditions of employment. It appears that there is a violation of D.C. Code Sec 1-618.4 (a) (5), the Administrative Procedure Act, D.C. Code 1978 Supp. 1-1506 (c) and 42 U.S.C. 1983 under the Civil Rights Act and the Federal Constitution.

Relief Sought

17. Complainant seeks a complete investigation of the circumstances in my case.
18. Complainant seeks back pay, if in fact an unfair labor practice is presumptive proof.
19. Complainant seeks such other relief as is appropriate and just.

Related Proceedings

20. There is a pending mediation with the D.C. Human Rights Office.

Respectfully submitted,



Carl L. White
3432 'N' Street S.E.
Washington, D.C. 20019
202-584-8221

[illegible]

Exhibit 4A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
POSITION VACANCY ANNOUNCEMENT

D.C. OFFICE OF PERSONNEL
SERVICING PERSONNEL OFFICE #2

ANNOUNCEMENT NO: FL(23)95-112 POSITION: Correctional Prog. Officer, DS-006-12

OPENING DATE: 07-31-95

CLOSING DATE: 08-11-95

IF "OPEN UNTIL
FILLED," FIRST

SALARY RANGE: \$ 40,068- \$51,624 PER ANNUM

SCREENING DATE: _____

TOUR OF DUTY: 8:15 A.M. - 4:15 P.M. MONDAY THRU FRIDAY

WORKSITE: Wash., D.C./Lorton, Va.

AREA OF CONSIDERATION: DEPARTMENT-WIDE ONLY

PROMOTION POTENTIAL: NONE

NO. OF VACANCIES: Two (2)

AGENCY: Department of Corrections/ADI

DURATION OF APPOINTMENT: ☒ Permanent ☐ Term (13 months to 4 years), Not to Exceed _____ ☐ Temporary (up to 1 year), Not to Exceed _____ months

☒ This position IS in the collective bargaining unit represented by Firearm Order Of Police /DOC Labor Committee and you may be required to pay an agency service fee through an automatic payroll deduction.

☐ This position IS NOT in a collective bargaining unit.

"RESIDENCY PREFERENCE AMENDMENT ACT OF 1988: An applicant for a position in the Career Service or for an attorney position (DS 905) in the Excepted Service who is a bona fide resident of the District of Columbia AT THE TIME OF APPLICATION, may claim a hiring preference over a non-resident applicant by completing the 'Residency Preference for Employment' form, DC 2000RP, and submitting it with the employment application, DC 2000. To be granted preference, an applicant must: (1) be qualified for the position; and (2) submit a claim form at the time of application. ^{Form DC 2000RP} titled by law to preference, preference will not be granted unless the claim.

BRIEF DESCRIPTION OF DUTIES:

Incumbent functions as an operational manager of an a: supervising and directing the activities of a multidisciplinary to work within the unit. Supervises and evaluates the performance of the job training to staff members; and monitors case management private and public agencies such as the courts, the parole board for all budget administration for the unit.

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QUALIFICATIONS REQUIREMENTS:

Specialized Experience: One (1) year of experience that knowledge, skills, and abilities to perform successfully the in or related to the work of the position to be filled.

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Exhibit 4B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS

Office of Community Correctional
Center #4



MEMORANDUM

TO : **Record**

FROM : *Carlton Butler*
A/Staff Assistant

DATE : August 16, 2000

SUBJECT: Correctional Program Officer
DC-006-12 FL (23) 95-11-12

RE : Carl White

This Memorandum will certify that in October 1995, when Carl White was promoted to the position of Correctional Program Officer DS-006-12, and reassigned to the Correctional Treatment Center. I had first hand knowledge that the position was announce as being in the in the Collective Bargaining Unit.

POSITION DESCRIPTION (Please)				Instructions on the Back)				1. Agency Position No.	
2. Reason for Submission		3. Service		4. Employing Office Location		5. Duty Station		6. Certification No.	
<input type="checkbox"/> Redescription <input type="checkbox"/> Reestablishment Explanation (show any positions replaced)		<input type="checkbox"/> New <input type="checkbox"/> Dept <input checked="" type="checkbox"/> Field		Washington, D.C.		Wash/Lorton, Va.		22-000000-5813	
Update of Supervisory Certification				7. Position Status		8. Employment/Financial Stmt Required		9. Subject to IA Action	
				<input checked="" type="checkbox"/> Career <input type="checkbox"/> Excepted <input type="checkbox"/> Educational <input type="checkbox"/> Executive <input type="checkbox"/> Judicial <input type="checkbox"/> Other		<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	
				10. Position is		11. FLSA		12. Competitive Level Code	
				<input checked="" type="checkbox"/> Supervisory <input type="checkbox"/> Managerial <input type="checkbox"/> Neither		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Non-Exempt		DS-0006-12-04-S	
								13. Agency Use	
14. Classified/Graded by		Official Title of Position				Pay Plan	Occupational Code	Grade	Initials
a. Final Agency Authority or designee									
b. Agency or Servicing Personnel Office		Correctional Program Officer				DS	006	12	Jim 1/26/95
c. Intermediate Authority									
d. Field Office									
e. Recommended by Supervisor or Initiating Office									
15. Organizational Title of Position (if different from official title)						16. Name of Employee (if vacant, specify)			
17. Department, Agency, or Establishment						c. Third Subdivision			
District of Columbia Government									
a. First Subdivision						d. Fourth Subdivision			
D. C. Department of Corrections									
b. Second Subdivision						e. Fifth Subdivision			
Associate Director for Institutions									
18. Employee Review. This is an accurate description of the major duties and responsibilities of my position.						Signature of Employee (optional)			
						Date			
Supervisory Certification. I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.									
a. Typed Name and Title of Immediate Supervisor						b. Typed Name and Title of Higher-Level Supervisor or Manager (optional)			
						Bernard L. Braxton, Associate Director/Institution			
Signature						Signature			
Date						Date			
						Bernard L. Braxton 1/26/95			
20. Classification/Job Grading Certification. I certify that this position has been classified/graded as required by Title 5, D.C. Code, in conformance with official standards or, if no official standards apply directly, consistently with the most applicable official standards.						21. Standards Used in Classifying/Grading Position			
Typed Name and Title of Official Taking Action						OPM-PCS-Correctional Institution Administration			
Joan E. Murphy, Supervisory						GS-006, TS-58, dtd 11/81.			
Personnel Management Specialist									
Signature						Information for Employees. The official standards, and information on their application are available in the personnel office. The classification of the position may be reviewed and corrected by the certifying authority or a designee of the Director of Personnel. Information on classification/job grading appeals is available from the Personnel Office.			
Date									
Joan E. Murphy 1/26/95									
22. Position Review		Initials		Date		Initials		Date	
a. Employee (optional)									
b. Supervisor									
c. Classifier									
23. Remarks									
No promotion potential									
24. Description of Major Duties and Responsibilities (see attached)									

INTRODUCTION

The incumbent functions as an operational manager of an assigned housing unit, and is responsible for supervising and directing the activities of a multidisciplinary team of staff members who are assigned to work within the unit. The units are conceptualized as small, self-contained "institutions" operating in a semi-autonomous fashion within the confines of a larger facility. This concept has the objective of providing improved inmate treatment and rehabilitation programs and strategies by dividing large numbers of inmates into smaller, well-defined groups who are housed together throughout the length of their institutional stay; and who work in a close, intensive treatment relationship with a multidisciplinary, relatively permanently assigned team of staff members, who have decision-making authority in all within-unit aspects of programming and institutional living.

POSITION CONTROLS

Work is performed under the general supervision of the Assistant Administrator of an assigned facility. Assignments are made on the basis of program needs and much of the work is self-generated, demanding a high degree of originality and ability to provide leadership and stimulate interest. Work is reviewed through informal conferences and periodically submitted reports; and reviewed for compliance with policies and procedures, and adherence to sound institutional management concepts and practices.

Guidelines include publications of the Department; rules and regulations of Institutional Services; policies and procedures of the assigned facility; manuals and directives as issued by Federal and state social and penal agencies; publications in the fields of sociology, psychology, social work, penology and criminology; records and reports made available by the various divisions and services of the Department; and principles and methods of correctional programming and management. The incumbent utilizes a high degree of professional competence and expertise in the interpretation and explanation of guidelines to interested parties.

DUTIES AND RESPONSIBILITIES

Supervises and evaluates the performance of unit staff members; provides on-the-job training to staff members as required; monitors case management activities, maintains a clean, safe, humane and secure unit environment.

Organizes, directs the implementation of policy and procedures in the unit, and evaluates the performance of the unit staff in executing these procedures. Coordinates unit operations with other units as well as other programs and operations of the assigned facility.

The incumbent is responsible for the accurate accountability of all equipment and supplies used and on inventory in the unit and is responsible for all budget administration for the assigned unit.

Provides for the maintenance, security, and control of unofficial inmate records assigned to the unit. May serve as chairperson of the unit disciplinary and classification committee; may serve as a member of the institutional disciplinary committee.

Acts as a liaison with private and public agencies such as the courts, the parole board, elected officials, etc. Submits reports as needed to the administrator and/or assistant administrator covering data such as incidents reported, food served, leisure time activities, and other significant events.

Consults with institutional administration, security personnel, and inmates as necessary in the resolution of emergency or extraordinary correctional problems.

Responsible for administration of unit programs as well as planning, developing, and implementing group and individual programs tailored to the needs of the inmates.

Executes personnel management functions such as resolving minor employee grievances, referring more difficult complaints to higher authority for resolution; prepares and maintains a variety of records and reports for budgetary, personnel and internal management purposes; and conducts regular staff meetings with subordinates to disseminate information as to new policies and procedures.

Performs other related duties as assigned.

UPDATE

On the News

Wrongly Jailed Man Considers Lawsuit

Now that the D.C. Department of Corrections has completed its inquiry into the erroneous 22-month incarceration of Joseph Heard at the District jail, the attorney for the deaf, mute and mentally ill man is waiting to find out whether the city is prepared to discuss an out-of-court settlement.

"If in fact they do not come to the table and talk a realistic settlement, we are prepared to file suit," said Heard's attorney, W. Thomas Stovall.

In the meantime, Stovall said, his client is spending time in Orlando, where his family lives, and returns to Washington occasionally. Heard is devoting much of his energy to attending school, where he is taking vocational courses, the lawyer said.

The investigation, conducted by the corrections department's internal affairs unit, found that four D.C. jail employees acted in a negligent manner by not adequately monitoring Heard's case.

The four employees, whose names and positions have not been released, were recently notified that the inquiry concluded they had violated agency policy and procedure in the Heard matter, spokesman Darryl J. Madden said.

The workers were also told that the department's human resources office will determine what steps should be taken against them, Madden said. Disciplinary measures could range from firing to a reprimand, and the employees have been informed that they would have the right to appeal at a departmental hearing.

Madden said the union representing the workers, the Fraternal Order of Police/Department of Corrections Labor Committee, will be officially notified soon of the punitive actions that might be taken against the employees.

Heard, 42, who was found to have paranoid schizophrenia, was in effect condemned to an open sentence when U.S. marshals brought him to the jail in October 1999 without any of the necessary paperwork. Heard had been ordered freed that day after a misdemeanor trespassing charge was dropped because he was deemed unfit to stand trial. But files authorizing his release never arrived, and no one at the jail checked to see whether the discrepancy had been resolved.

Heard's case came to the attention of his jailers during a review of inmates who were about to be transferred. A search showed that his records had been mistakenly classified as inactive and sent to storage. On Aug. 13—669 days after he was jailed—Heard was released.

—Serge F. Kowaleski

Pentagon Bus Station to Open Dec. 16

After weeks of displacement because of the Sept. 11 terrorist attack, bus commuters will be welcomed back to the Pentagon on Dec. 16 when a \$36 million Pentagon bus facility opens, said Brett Eaton, spokesman for the Pentagon renovation.

The station, under construction since February, replaces a bus transfer facility that had been on the grounds of the Pentagon since 1977. More than a year ago, Department of Defense officials decided to move the bus station about 300 yards east of the Pentagon out of security concerns.

While the station was under construction, buses dropped off commuters elsewhere at the Pentagon. But Sept. 11, buses were shifted to the Pentagon City Metro station until the bus transfer facility at the Pentagon could be completed.

Military contractors built a two-level bus platform separated by elevators, escalators and stairs. The idea is to separate incoming buses from outgoing buses and remove all bus traffic

Released, Two Arrive To Hugs, Celebrity

RETURN, From B1

father, John Mercer.

When asked what she would with all the attention surrounding her release, Mercer smiled and said, "We hope this whole situation, one, brings concern to the needs of Afghanistan . . . and we so want the world to know that God is faithful in answering prayer."

Both indicated that they hope return to Afghanistan to continue humanitarian work.

Family members said the duo aim of drawing attention to the needs of the oppressed in Afghanistan and their Christian testimony has been discussed carefully by the two women since their release Nov. 15.

John Mercer said that the women seem to be handling the media attention well but that he believes they will soon need legal representation because "everyone will be trying to get a piece of them."

"They will need someone who will look out for their interests and not just try to make money of them," he said.

Mercer and Curry first attracted media attention when they were arrested in early August with 22 co-workers—two Australians, four Germans and 16 Afghans—and put on trial by the Taliban. All were members of Shelter Now International, a German-based Christian humanitarian group.

The workers were charged with everything from showing a film about Jesus to Afghan families to passing out Christian literature—crimes punishable by death under the Taliban's Islamic laws.

The trial was still going on when the Sept. 11 terrorist attacks occurred. Mercer's mother, Deborah Oddy, visited her daughter in a Taliban prison in Kabul just hours before the hijacked planes slammed

Exhibit 17

Carl L. White
3432 'N' Street S. E.
Washington, D.C. 20019
2020-584-8221

I, Carl L. White, certify that on Saturday, April 06, 2002, I served a copy of the complaint (PERB Case # 02-U-15) & exhibits by first class U.S. mail on the following individual:

Mary Leary, Director
Office of Labor Relations and Collective Bargaining
441 4th Street N.W. Suite 200
Washington, D.C. 20001



Carl L. White (Retiree),
Complainant